Crown Cork & Seal Company, Inc. *and* United Steelworkers of America, AFL-CIO-CLC. Cases 27-CA-6084, 27-CA-6127, 27-CA-6176, -3, -4, 27-CA-6217, -2, 27-CA-6321, 27-CA-6364, and 27-CA-6372

March 17, 1981

DECISION AND ORDER

On August 6, 1980, Administrative Law Judge Timothy D. Nelson issued the attached Decision in this proceeding. Thereafter, counsel for Respondent filed exceptions and a supporting brief, and counsel for the General Counsel and the Charging Party filed answering briefs and cross-exceptions to the Administrative Law Judge's Decision.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

The Administrative Law Judge found that the preelection statements made by Supervisors Dowdell and Louden to employees—to the effect that, "if the Union got in," Pepsi, Respondent's sole customer of steel cans, "would switch to less costly aluminum cans and Respondent would be forced to shut down"—constituted predictions of adverse consequences beyond Respondent's control which were grounded on an "objective factual basis" and, therefore, are not violative of Section 8(a)(1) of the Act. He reached that conclusion on the basis of employee Russell's credited testimony that, during several discussions with employees on the subject, Dowdell articulated the premise underlying his statement—that, if the Steelworkers won the election and its master contract was applied, Respondent's wages would increase by 30 to 40 percent and labor costs could become so high that the Company might lose the Pepsi account.[2] We find merit in the exceptions of the General Counsel and Charging Party to the dismissal of this allegation in the complaint.

Respondent is free to communicate to its employees its beliefs and even its predictions if its predictions are based solely on objective facts which convey its belief as to demonstrably probable consequences beyond its control.[3] Here, Respondent clearly has not met its burden of providing an objective factual basis for these statements, because it does not necessarily follow that a union election victory *per se* would increase Respondent's labor costs disproportionally to Pepsi's willingness to pay increased costs if passed on, or that Pepsi would discontinue purchasing Respondent's steel cans, or that Respondent would have to close its Worland plant as a consequence thereof. Nor is there any showing that any of these speculative consequences are beyond Respondent's control. We find, therefore, that these statements were made in the context of a pervasive anti-Steelworkers campaign which Respondent emphasized by threats of job loss if the "wrong" union became the employees' representative, and that they were made for the purpose of inducing the employees to vote against the Steelworkers, and thus interfered with their Section 7 rights in violation of Section 8(a)(1) of the Act. We shall, therefore, amend the recommended Order accordingly.[4]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below,[5] and hereby orders that the Respondent, Crown Cork & Seal Company, Inc., Worland, Wyoming, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Add the following as paragraph 1(d) and reletter the subsequent paragraphs accordingly:

"(d) Threatening employees with plant shutdowns."

2. Substitute the following for paragraph 1(k):

"(k) In any other manner interfering with, restraining, or coercing employees at our Worland, Wyoming, plant in the exercise of the rights guaranteed them by Section 7 of the Act."

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In the absence of exceptions thereto, Chairman Fanning adopts the Administrative Law Judge's dismissal of 8(a)(1) allegations pertaining to the denial of union representation at certain disciplinary interviews, noting that he dissented in *Baton Rouge Water Works Company*, 246 NLRB 995 (1979), relied on by the Administrative Law Judge.

[2] We also note that the Administrative Law Judge found that Dowdell also told employee McLelland that Respondent never would pay the wages called for in the Steelworkers master contract.

[3] *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575, 619 (1969).

[4] The Administrative Law Judge's Conclusions of Law are modified by adding the following as 3(b), and relettering the subsequent Conclusions of Law accordingly:

"(b) Threatening plant closure if the Union came in, by Supervisors Dowdell and Louden."

[5] The Administrative Law Judge's recommended Order encompasses all of Respondent's operations which are subject to the Board's jurisdiction. We find no warrant on the record for the overly broad scope of the Order, and, accordingly, we shall limit it to Respondent's Worland, Wyoming, plant, which is the only facility involved herein.

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT interrogate employees concerning their own or other employees' union activities or sympathies, including by questioning them about attendance at union meetings or how they intend to vote in a Board election.

WE WILL NOT threaten employees with plant shutdowns.

WE WILL NOT discipline or threaten to discipline employees engaged in union or other protected concerted activities because said activities violate the "no-solicitation" rule (rule number 12) contained in plant rules and regulations introduced into the Worland plant on or about August 21, 1978.

WE WILL NOT devise or put into effect any other rule or regulation having the effect of limiting our employees' rights to engage in union or other protected concerted activities, where our purpose is to discourage membership in or activities on behalf of the said Steelworkers, or any other labor union.

WE WILL NOT begin or maintain a program of watching our employees closely in the performance of their work to catch them in mistakes or other misconduct because they engage in union or other protected concerted activities, including serving in or running for positions of leadership in the said Steelworkers, or any other labor union.

WE WILL NOT prepare false or exaggerated reports of misconduct of employees for inclusion in their personnel files because they engage in union or other protected concerted activities.

WE WILL NOT refuse to permit employees to have a union representative present during investigatory interviews leading to potential discipline of employees.

WE WILL NOT render unlawful financial or other assistance to International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union No. 307, or any other labor union, by setting employees up in a job so that they may meet new employees and solicit them to join the said Teamsters or other union, or by encouraging employees to engage in such conduct, or by giving special treatment to employees favoring the said Teamsters or other union such as permitting them to leave work to confer with and receive information from our agents which is helpful to the said Teamsters or other union.

WE WILL NOT discriminate against employees by disciplining, demoting, discharging, reassigning to less desirable or more onerous shifts or job tasks, fabricating or exaggerating reports or other writings for inclusion in personnel files, or by extraordinary surveillance or study of employees' working performance because they engage in union or other protected concerted activities.

WE WILL NOT fail or refuse to hire employees because they are, or are believed to be, members of, or engaged in activities on behalf of, a labor organization, or because they are relatives of persons engaged in such activities.

WE WILL NOT discharge or otherwise discriminate against employees because they have filed unfair labor practice charges or have otherwise given testimony under the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees at our Worland, Wyoming, plant in the exercise of their rights under Section 7 of the Act.

WE WILL rescind and give no further force or effect to the "no-solicitation" rule introduced into the Worland plant on or about August 21, 1978.

WE WILL offer immediate and full reinstatement to Marion DeJong to the job as maintenance machinist on the day shift which he occupied before mid-January 1979, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed,

and WE WILL make him whole, with interest, for all wages and benefits which he lost as a result of our discrimination against him, including for wages he lost during his 3-day suspension in late April-early May 1979, the reduction in wages which he suffered as a result of his demotion on or about May 14, 1979, and the loss of his job when we fired him on August 24, 1979.

WE WILL remove all adverse materials contained in Marion DeJong's personnel file and other records maintained by us, excepting only references prepared by his supervisor to an extended break which he took on the evening of April 26, 1979.

WE WILL, to the extent we have not already done so, offer immediate and full reinstatement to their former jobs to James Weldon and Gerald Kasselder, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed.

WE WILL make James Weldon and Gerald Kasselder whole, with interest, for any losses of wages or benefits they may have suffered between their respective discharges in April 1979 and the dates on which we give effect to our promise to reinstate them.

WE WILL immediately offer employment to Sharon DeJong in a job which she would have received if we had not failed and refused to hire her on and after February 17, 1979, with full employment credit since that date for seniority and other purposes.

WE WILL make Sharon DeJong whole, with interest, for any losses of pay or other benefits which she may have suffered due to her not having been hired on or after February 17, 1979.

All of our employees are free to become members of, or engage in activities on behalf of, United Steelworkers of America, AFL-CIO-CLC, or any other labor organization.

CROWN CORK & SEAL COMPANY, INC.

DECISION

STATEMENT OF THE CASE

I. INTRODUCTION

TIMOTHY D. NELSON, Administrative Law Judge: I heard these consolidated cases at Worland, Wyoming, on November 6, 7, 8, 27, 28, and 29, 1979. They involve alleged violations by Crown Cork & Seal Company, Inc. (Respondent), of Section 8(a)(1), (2), (3), and (4) of the National Labor Relations Act, as amended (the Act), in a period spanning from August 1978 through August 1979. All alleged violations were initially brought to the attention of the Regional Director for Region 27 of the National Labor Relations Board pursuant to successive unfair labor practice charges against Respondent filed by United Steelworkers of America, AFL-CIO-CLC (the Union), on various dates in 1979. At various intervening stages, the Regional Director issued various complaints, consolidated complaints, and amended consolidated complaints and, through counsel for the General Counsel, further amended the outstanding consolidated amended complaint at the opening of the hearing.

Due to the unnecessary proliferation of case docket numbers, the lack of any single comprehensive complaint, and the omission by the General Counsel on brief of any statement of the case, the procedural history of this case has been most difficult to unravel. From careful examination of the formal papers, however, the following summary appears accurately to reflect the sequence of charges and complaint allegations as they emerged prior to, and at, the hearing (all dates in the summary are in 1979):

January 25: The 8(a)(3) charge filed in Case 27-CA-6084 alleging discriminatory discharge of Yvonne Hartley (not ultimately pursued).

March 7: The 8(a)(2) charge filed in Case 27-CA-6127 alleging unlawful assistance to rival union.

March 21: The 8(a)(1) complaint and notice of hearing in Case 27-CA-6084 (apparently linked to allegations in amended Case 27-CA-6084 filed later) alleging multiple unlawful threats and interrogations and setting hearing for July 10.

March 26: The 8(a)(1) amended charge filed in Case 27-CA-6084 alleging threats and interrogations.

April 16: The 8(a)(3) charge filed in Case 27-CA-6176 alleging discriminatory discharge of James Weldon.

April 30: Order consolidating cases, amended complaint and notice of hearing in Cases 27-CA-6084 and 6127 alleging 8(a)(1) threats, and interrogations and 8(a)(2) unlawful assistance to rival union, setting hearing for July 10.

May 7: Separate 8(a)(3) charges filed in Cases 27-CA-6176-3 and -4, alleging, respectively, unlawful discipline and threats of termination of Marion DeJong, and discriminatory discharge of Gerald Kasselder.

May 18: (During pendency of investigation of Cases 27-CA-6176-3 and -4) Regional Director approves 8(a)(1) and (2) informal settlement agreement in Cases 27-CA-6084 and 6127 containing "nonadmission" clause and "reservation" clause excluding agreement's coverage from Cases 27-CA-6176 (-3 and -4) or other "related charges" and permitting introduction of evidence bearing on "settled" matters in any hearing on "other related charges."[1]

[1] The settlement agreement provided for posting of a notice containing assurances against unlawful assistance to rival organizing, plant closure threats, or "in any other manner interfer[ing] with, restrain[ing], or coerc[ing] employees in the exercise of their rights [as set forth in Section 7 of the Act]." The settlement was set aside by the Regional Director on June 25 without Respondent having commenced the notice posting pursuant thereto.

May 21: Separate charges filed in Cases 27-CA-6217 and 6217-2 alleging, respectively, 8(a)(1) and (4) threats and discrimination against Marion DeJong, and recharacterizing the discharge of Gerald Kasselder (already the subject of an 8(a)(3) charge in 27-CA-6176-4) as having violated Section 8(a)(3).

June 25: Order revoking settlement agreement, order consolidating cases, amended complaint and notice of hearing in all cases referred to above, alleging breach of May 18 settlement agreement, realleging multiple 8(a)(2) unlawful assistance violations, and further alleging new 8(a)(1) violations in the promulgation and maintenance of an unlawful no-solicitation rule, the denial of union representation at disciplinary interviews, and threats; and further alleging 8(a)(3) violations in the treatment of Marion DeJong and the discharges of James Weldon and Gerald Kasselder; and further alleging that the treatment of Marion DeJong and the discharge of Gerald Kasselder violated Section 8(a)(4); and setting hearing for October 30.

July 10: Order rescheduling hearing on the foregoing to November 6, upon request of counsel for Respondent.

August 17: The 8(a)(3) charge in Case 27-CA-6321 alleging unlawful refusal to hire Sharon DeJong, wife of above-mentioned Marion DeJong.

September 20: Order revoking settlement agreement, further order consolidating cases, amended consolidated complaint and notice of hearing in all cases referred to above containing same 8(a)(1), (2), (3), and (4) allegations as in June 25 similar order, and further alleging 8(a)(3) discriminatory refusal to hire Sharon DeJong, and setting hearing for November 6.

September 24: The 8(a)(3) charge filed in Case 27-CA-6364 alleging discriminatory discharge of Marion DeJong.

October 3: The 8(a)(3) charge filed in Case 27-CA-6372 alleging discriminatory discharge of Roger Geer.

October 26: Letter from the General Counsel to Respondent notifying of intention further to amend September 20 amended consolidated complaint at November 6 hearing by alleging additional counts of 8(a)(1) threats, interrogation, and denial of union representation at disciplinary interviews, and by alleging additional 8(a)(3) violations by the discharges of Marion DeJong and Roger Geer.

November 6: The General Counsel's motion at hearing to amend in accordance with its October 26 letter.

II. THE ISSUES

Respondent has duly filed answers to the various complaints and amendments thereto denying all wrongdoing alleged therein, but admitting its status as an employer engaged in commerce and subject to the Board's jurisdiction. Respondent further admits that due filing and service on it of all charges and other moving papers has been perfected, excepting only its contention that the alleged 8(a)(2) unlawful assistance charge in Case 27-CA-6127 was untimely filed outside the 6-month "limitations" period prescribed in Section 10(b) of the Act. In addition, Respondent has formally denied the supervisory status of certain individuals alleged to have made statements violative of Section 8(a)(1).

Respondent further denies that the Union is a "labor organization" within the meaning of Section 2(5) of the Act, affirmatively averring that the Union, as an international body, is "incapable of adequately representing employees without the assistance of a Local." As is further discussed below, the Union was duly certified by the Board in a companion representation matter as the exclusive bargaining representative of the unit employees in question and the question of the Union's status as a labor organization was litigated in that representation proceeding and is not subject to relitigation in these "subsequent, related proceedings." (NLRB Rules and Regulations, Sec. 102.67(f).) Accordingly, Respondent's contention in this regard must be determined, *pro forma*, to be without merit. The record also affirmatively reflects that the Union meets all statutory tests as a "labor organization" and that it, in fact, operates through a local.

Finally, Respondent contends that the May 18, 1978, settlement agreement should not have been set aside because Respondent committed no unfair labor practices following its approval.

The balance of the issues to be resolved herein are implicit in the above summary of the substantive complaint allegations.

All parties appeared through counsel and were given full opportunity to examine and cross-examine witnesses and to introduce other evidence, and have further filed extensive post-trial briefs[2] which were timely received and given full consideration. Upon the entire record herein, including upon my evaluation of the witnesses' demeanor and other factors bearing upon their credibility, I make the following:

FINDINGS OF FACT AND PRELIMINARY CONCLUSIONS

III. BACKGROUND SUMMARY

Respondent is a New York corporation with headquarters offices in Philadelphia, Pennsylvania. It is engaged directly or through subsidiary companies at plants located throughout the United States and Puerto Rico in the manufacture of container products. Respondent opened the new plant facility involved in these cases in May 1978 at Worland, Wyoming, a small community in the west central portion of that State. The Worland plant manufactures beverage cans exclusively for Admiral Beverage Company (Admiral) in Worland, a "private filler" for, among other beverage producers, Pepsi-Cola.[3] The Admiral plant is referred to periodically in the record as the Pepsi plant.

The Union is the established representative of employees at several of Respondent's other plants in various locations around the country. Other labor organizations represent employees in yet other of Respondent's plants.

The Union began organizing efforts among Respondent's production and maintenance employees at Worland

[2] Charging Party's counsel advised me in writing that it wishes to adopt the brief filed by the General Counsel.

[3] Respondent admits and I find that it annually purchases and receives goods and materials valued in excess of $50,000 directly from points and places outside Wyoming.

in June 1978, when an "in-plant committee" was formed. The Union filed an election petition in Case 27-RC-5742 on August 16 and, following intervening hearing, a Decision and Direction of Election, and the Board's denial of Respondent's request for review of said direction, the Union prevailed in a Board-conducted election held on November 17, 1978.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the Teamsters), had engaged in some organizing efforts and had intervened in the election case at Worland. Of 73 ballots cast in the November 17, 1978, election, the Union received 47 votes, and the Teamsters received 1 vote. There were 10 votes against representation, and 15 nondeterminative challenged ballots. On November 22, 1978, Respondent filed objections to the election but these were overruled and the Union was duly certified as the exclusive representative of Respondent's production and maintenance employees on April 13, 1979. The Board subsequently denied Respondent's request for review of the Regional Director's decision, overruling its objections and certifying the Union. Respondent continues to refuse to recognize or bargain with the Union and is testing the validity of the underlying certification in a separate proceeding under Section 8(a)(5) of the Act.[4]

IV. PLANT ORGANIZATION: SUPERVISORY ISSUES

The Worland plant has three basic divisions: "D&I" lines (where the steel can manufacturing takes place), maintenance/machine shop (responsible for installation, repair, and maintenance of production equipment and incidental mechanical and electrical systems for the plant), and shipping and receiving (which performs recordkeeping and warehousing functions associated with the receipt of materials and shipping of finished products). At all times material, there has been a plant manager at the top of Respondent's admitted management hierarchy.[5] Second in command is the plant superintendent who is directly responsible for manufacturing operations.[6] Directly responsible to the plant superintendent are: The maintenance/machine shop supervisor and master mechanic, Donald Peterson; the overall D&I line manager, Leo Kiker; and the shipping and receiving supervisor (Bruce Edwards, at all times material herein). Each of the D&I lines also has a "line supervisor" who reports directly to Leo Kiker. At the time of the hearing there were nine such.

All of the aforementioned are salaried, unlike the hourly paid persons who work in their respective divisions or on the D&I lines for which they are responsible. The record affirmatively establishes that all such individuals exercise authority in the responsible overseeing of work done by employees in their respective areas, including the initiation of disciplinary or corrective action, and that they satisfy the definition of "supervisor" contained in Section 2(11) of the Act. Some details supporting this ultimate conclusion are adverted to in connection with the findings below regarding alleged discrimination against certain employees.

It is further noted that certain of the alleged supervisors with whom we are here concerned, Donald Peterson, Roger Dowdell, Frank Pacheco, and Marlene Louden, were found to have been statutory supervisors in the above-mentioned representation matter on the basis of a hearing record in which these issues were specifically litigated. Under these circumstances, and in the absence of newly discovered evidence not previously available by the exercise of reasonable diligence, changed circumstances affecting the continuing validity of the representation case findings, or other extraordinary circumstances, their status may not be relitigated in this proceeding and Respondent is stopped from challenging that determination herein. (NLRB Rules and Regulations, Sec. 102.67 (f).) Alternatively, I may accord to the representation case findings a form of "administrative comity" in aiding my resolution of their status. *Serv-U-Stores, Inc.*, 234 NLRB 1143, 1144 (1978).

Respondent appears to have abandoned its formal denial of their supervisory status in any case. On brief, it refers to Peterson, Dowdell, Pacheco, and Louden as "supervisors," arguing only that their conduct in the complained-of incidents did not constitute violations of the Act. Based on all the foregoing, I find that the aforementioned individuals are, and have been at all times material herein, supervisors within the meaning of Section 2(11) of the Act, and agents of Respondent.

Bruce Edwards was held not to be a supervisor in the representation matter when he then held the position of shipping and receiving clerk. Since that time, however, on March 1, 1979, he was promoted to the position of shipping and receiving supervisor, becoming salaried at that time, and becoming responsible for the direction of approximately four employees in that department. That promotion, according to Plant Manager Lester, entitled Edwards to the same package of benefits that "management" receives, which benefits are different from those received by the hourly employees. Edwards wears a shirt and tie in his new position, unlike other hourly employees in that department, and he works a substantially longer workday than they do. Plant Manager Lester testified that Edwards makes written "performance evaluations" of shipping and receiving employees and "authoritatively" directs when overtime work shall be done by them and grants them permission for time off or to leave work early to attend to personal business. He performs no physical labor himself. I therefore conclude that, since his appointment to the position of shipping and receiving supervisor, Edwards has been a supervisor within the meaning of Section 2(11) of the Act, and an agent of Respondent.

[4] Case 27-CA-5296. On January 2, 1980, the Board granted summary judgment in that case in favor of the General Counsel in its Decision and Order reported at 247 NLRB No. 8. There, the Board found that Respondent was unlawfully refusing to recognize or bargain with the Union and directed it to cease and desist therefrom and to commence bargaining upon the Union's request. Presumably, the matter is now before a United States court of appeals, pursuant to either the Board's application for enforcement, or Respondent's petition for review, or both.

[5] The position occupied by John Cordova from the plant's opening until early February 1979 when he was transferred to another of Respondent's plants and was replaced by Donald Lester.

[6] This position was first occupied by Robert Taylor, who also functioned as, and held the title, "personnel manager" throughout the same period.

Diana Song (now Lyman), employed in the personnel office at the Worland plant, performed many of the duties of interviewing, screening, and hiring employees during the period before April 1979, when Robert Taylor was hired to occupy the position of personnel manager. Based on her role in that regard,[7] including its amplification by certain evidence incidentally related below, I find that she was, at all times material, a supervisor and agent of Respondent.

V. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The 8(a)(2) Allegations*

Worland plant employee Gerald Kasselder testified credibly, in substance, that Respondent knowingly cooperated closely with Teamsters agents, *inter alia*, to permit Kasselder to use worktime to obtain Teamsters authorization cards from employees during the preelection period in an effort to blunt the Union's concurrent organizing drive at the Worland plant. Kasselder's testimony was not denied by any of Respondent's agents whom Kasselder named as being instrumental in this scheme.[8] I therefore fully credit Kasselder his account, as summarized below, of Respondent's behavior in this regard.

Kasselder, then a member of the Teamsters, had been working in Rock Springs, Wyoming, on the Jim Bridger Power Plant project until about mid-July 1978.[9] Anticipating that his job at Rock Springs was about to end, he was referred by someone in the Teamsters Cheyenne office to Lloyd Long, a Teamsters business agent who was staying in Worland. Kasselder telephoned from Rock Springs to Long in Worland on or about July 22. Long informed Kasselder that a "can plant" was hiring in Worland and suggested that Kasselder meet him there. They made an appointment for July 26. Kasselder came to Worland on July 26 but did not locate Long. In Long's absence, Kasselder completed an application at Respondent's plant and, later that day, was interviewed by Harold Abrams, who I find was Respondent's director of industrial relations from Philadelphia corporate headquarters.[10] Kasselder told Abrams that he was a member of the Teamsters and had been referred by Teamsters Agent Long to apply for work at the Worland plant. Abrams later called Plant Manager John Cordova into the interview and, after further conversation, Kasselder was told he would be hired for work in the "storeroom." It was further arranged for Kasselder to begin working on July 29, to permit him to move his trailer from Rock Springs to Worland.

From July 29 until mid-August, Kasselder worked a day shift, starting at 7 a.m., maintaining storeroom inventories and checking out parts and tools for use on the production lines. This job entailed, *inter alia*, occasional visits upstairs to Cordova's office to obtain the latter's approval on parts reorders.

In mid-August, Kasselder was reassigned to perform the same job on the 4:30 p.m. to 4:30 a.m. night shift. A few days later, he was awakened about 8 a.m. by a visit at his trailer from Teamsters Agent Long. Long asked how Kasselder was getting along on the job and secured Kasselder's signature on a Teamsters authorization card. Long then made an appointment to meet Kesselder at 1 p.m. at the Washakie Hotel in Worland, also mentioning "that this other gentleman" would be present, as well.

Kasselder then went back to bed, but was again awakened by Long at 11 a.m. Long was accompanied by a man he introduced to Kasselder as Teamsters Organizer Frank Frauenfeld.[11] Long told Kasselder to get dressed because he was "going to work." Either Frauenfeld or Long, or both, then explained that Kesselder would "no longer be working nights," but, instead, when he returned to work, he would be assigned to a job "upstairs in the office" and that he would be "getting cards signed for the Teamsters."

Kasselder then dressed, had lunch, and went to the plant. Cordova was waiting for him when he arrived in the upstairs offices and, after commenting that it was "about time" that Kasselder appeared, Cordova sent Kasselder on an errand to bring card files from the storeroom to the upstairs offices. When Kasselder returned from that errand, Cordova asked him if "everything" had been "explained." Kasselder expressed some doubt, causing Cordova to comment disgustedly that "everything should have been explained!" Kasselder then asked Cordova if he was referring to "to this deal with Lloyd coming to my trailer and telling me I was to have an office job and getting cards signed." Kasselder added that he had been told that much, but that he had not

[7] Between February 1979 and Taylor's arrival on the scene in April, Song was directly responsible for screening, interviewing, and placing between 50 and 100 employees in jobs at the Worland plant. Moreover, as recently as November 1979 she had signed a "special performance report" warning notice to an employee in the space calling for the signature of "Industrial Relations Manager."

[8] The two key agents of Respondent named by Kasselder were then Plant Manager John Cordova and Respondent's director of corporate security from the Philadelphia headquarters, Francis Lederer. Although hearing scheduling offered Respondent ample time after Kasselder's testimony to call both Cordova and Lederer as witnesses, Respondent did not do so. Cordova had been called as an adverse witness by the General Counsel before Kasselder's testimony. He testified primarily on subjects other than the 8(a)(2) matter, but he was asked at one point by the General Counsel whether he had "any knowledge as to what Kasselder did on behalf of the Teamsters." Cordova replied: "No." Cordova was an unimpressive witness whose uneasy demeanor and repeated lack of recollection of matters which one would expect him to recall rendered his testimony in the cited area incredible. I likewise discredit his perfunctory testimony that Lederer was in Worland at times between July and September solely for "plant security" purposes, as well as any other testimony by him which may appear to contradict findings made hereafter.

[9] All dates in this account are in 1978.

[10] Kasselder vaguely recalls that Abrams was introduced to him as having "something to do with public relations." Marion DeJong states that Abrams was introduced as "Director of Personnel Relations" during speeches Abrams gave to employees before the election. In *Crown Cork de Puerto Rico, Inc.*, Cases 24-CA-3787, *et al.* (not published in bound volumes), Administrative Law Judge Irwin H. Socoloff found, *inter alia*, that the employer therein was a subsidiary of Respondent. Administrative Law Judge Socoloff refers to a visit to the subsidiary by "Harold Abrams, director of industrial relations of Crown Cork & Seal Co., Respondent Employer's parent corporation located in Philadelphia . . . ." See also *Crown Cork & Seal Company, Inc.*, 182 NLRB 657, 659 (1970), wherein Abrams is likewise found to have held the title of director of industrial relations.

[11] Frauenfeld is independently referred to in the record several times. In a March 15, 1979, telegram sent in duplicate to both the Union and "Frank Frauenfeld, Teamsters Joint Council 13, Riverton, Wyoming," Respondent advised both unions of a contemplated wage increase for Worland plant employees (while simultaneously disclaiming that Respondent recognized "either union"). G.C. Exh. 9.

been told how he was "going to go about this and why [he] was up there in the office to do this." Cordova explained that the office was "more or less a coverup to be getting these cards signed, and then [Kasselder] would be meeting new hires . . . and would take them on a tour of the plant to get these cards signed." Cordova told Kasselder that he would be working on the card files in his "spare time" between taking new employees on plant tours, and that he should not "talk about it to anybody" or let anyone know what he was "doing up there."

Thereafter, Kasselder, who possessed no previous experience in a can plant, took small groups of new hires on plant tours. When he reached a remote end of the plant, he would adopt a confidential pose, tell the new employees that he was trying to get the Teamsters into the plant, and would solicit employees' signatures on Teamsters cards. After about 4 days of this activity, he was again assigned to work in the storeroom. Periodically over the next 5 days or thereabouts, Kasselder would be called upstairs to meet additional new hires and take them on a plant tour, during which he continued to solicit signatures on Teamsters cards. This enterprise over an 8- to 10-day period in late August resulted in Kasselder's securing approximately 21 Teamsters authorization cards.[12]

While in the midst of those activities, on or about August 19, Kasselder asked Cordova if Harold Abrams was aware of his Teamsters solicitation activities. Cordova replied that there was "nothing that went on in the plant" that Cordova and Abrams were not aware of. Also during the latter part of this period, Cordova introduced Kasselder to Corporate Security Director Francis Lederer. After making small talk in Cordova's office, Lederer arranged to meet with Kasselder that evening at 6 p.m. at Lederer's room at what Kasselder thought was the Town House motel.

That evening, Kasselder went to the Town House and located the "room 5" designated by Lederer. Coincidentally, that room was occupied by the Union's representative, Powell, who was conducting organizational activities from that site. Powell assisted Kasselder by telephoning the similarly named Town and Country Motel located nearby and ascertained that Lederer was registered there.

Kasselder then went to the latter motel and met with Lederer in his room, explaining the mixup which had resulted in his meeting at the Town House with Powell from the Union. Kasselder reports that Lederer "got shook up" by this news, closed the curtains, and sought further details about what the Union's representatives at the Town House had said and done. Kasselder gave a brief account, prompting Lederer to suggest that one of the Union's representatives had probably followed Kasselder to the meeting with Lederer. Nothing more of substance was said. Lederer placed a telephone call and dismissed Kasselder, asking him to send the occupant of a car in the parking lot up to his room. Kasselder went to the parking lot, found a car occupied by two men, one of whom he later learned was David Murdock,[13] and gave them Lederer's message.

Kasselder had at least one more clandestine meeting with Lederer before the end of August and during the period when he was still conducting "plant tours" and soliciting new employees to sign Teamsters cards. That meeting occurred when Cordova sent Kasselder on an errand to the Admiral (Pepsi) plant. Upon arriving at the Pepsi plant, Kasselder found Lederer waiting for him. The two drove around in Lederer's car while Lederer urged Kasselder "to really talk Teamsters." Lederer suggested, *inter alia*, that Kasselder try to convince employees that an unsuccessful unfair labor practice charge in Case 27-CA-5912 which the Union had filed on behalf of an employee named Regina Hansen showed that the Union was ineffective and that the Teamsters "would probably be a stronger union as far as backing their people."[14]

Within a few days after that meeting, Kasselder became discouraged by the apparent majority support among Respondent's employees for the Union and left a note with Lederer in the plant office saying that Kasselder wished to meet with him again. By this point, Kasselder had ceased receiving plant tour assignments. Shortly after leaving the note, Kasselder was again called from his storeroom work location and was sent by Cordova on another "errand" to the Admiral facility. He again found Lederer waiting for him in a car outside the Admiral plant. They drove in Lederer's car to the outskirts of town and parked. Kasselder told Lederer of his doubts about the Teamsters campaign, remarking that "everybody in there was wearing Steel Workers caps and the Teamsters hadn't been conducting meetings . . . and that somebody should get up there and do something." Lederer urged Kasselder to call Frank Frauenfeld about his concerns and Kasselder countered that Lederer should call Frauenfeld because Lederer "probably had more influence." At this point, Lederer said that he "had a friend" who could provide Kasselder with a list of plant employees' names and telephone numbers and suggested that Kasselder call employees and set up a meeting with them. Lederer instructed Kasselder to leave his car window open slightly when he parked it in the plant parking area so that the list of names and telephone numbers could be delivered. Later that day, back at the plant, Kasselder saw Lederer leave the plant, heading in the direction of the parking area. When Kasselder finished his shift, he went to his car and found the promised list inside it.

At some point in early September, Kasselder was switched from an hourly to a salary rate. He states that he had been told by Cordova that he would continue to be entitled to overtime pay notwithstanding this conver-

[12] The record does not disclose precisely when Teamsters intervened in the representation case which had been initiated by the Union's petition filed August 16; but the record does include the Regional Director's Decision and Direction of Election in that case which mentions the appearance of Teamsters as intervenor at the representation case hearing on September 27.

[13] Murdook, through a business known as Peddal, Inc., performed surveillance and security services at Respondent's plant operating under the cover of a trash removal service. His role is further detailed below.

[14] The parties stipulated that the "Hansen" case was dismissed on August 22 by Region 27.

sion. After he had failed to receive such overtime payments on one paycheck in September, he had spoken with Cordova about it and had received assurances from Cordova that it would be rectified. When, near the end of September, Kasselder again failed to receive overtime payments on his check, he telephoned Frank Frauenfeld in Denver and told Frauenfeld that he intended to quit his job. Frauenfeld urged Kasselder not to quit, and asked Kasselder to "give him about 10 minutes" and Frauenfeld would "call back." Shortly afterwards, Frauenfeld called Kasselder back and urged him to try to settle the matter with Cordova. Kasselder protested that he had done so once without result but, on Frauenfeld's continued urging, Kasselder called Cordova. Cordova received Kasselder's call with annoyance, saying that he had received "a call from Philadelphia" asking "what was going on." Cordova complained that Kasselder should have brought the problem to him directly and, had Kasselder done so, "we could have got it settled." Cordova then asked Kasselder to take a "rough guess" as to how much overtime pay he felt he was entitled to. Kasselder named a figure of about $170. Cordova said that he would not be able to produce a check immediately, since there was no one available "back east" (i.e., Philadelphia, the source of paychecks for Worland employees) at that time of day. Kasselder reiterated his determination to quit if that were the case. Cordova then asked if Kasselder would wait until Cordova could arrange to have a check prepared in Respondent's local bank account which he could deliver to Kasselder by late that afternoon. Appeased, Kasselder agreed. Later that day, around 6 p.m., Cordova made a special trip to Kasselder's trailer residence, locally drawn check in hand.

Around the latter part of September, Kasselder had become increasingly disenchanted with Teamsters and let those feelings be known around the plant. "Around the very first part of October," Kasselder was called by the Union's representative, James Powell, who asked to meet with Kasselder at Powell's room at the Town House motel. Kasselder agreed. During that meeting, Kasselder disclosed to Powell the facts related above about his key role in what was evidently a conspiracy between Respondent and Teamsters to blunt the Union's organizing drive through the familiar stratagem of "divide and conquer."[15] Kasselder also told Powell that he wished to switch his allegiance to the Union for the balance of the preelection campaign.

Powell states that, until he had the above-described meeting with Kasselder, he had received no independent, firsthand evidence to support a charge that Respondent was providing assistance to the Teamsters organizing efforts. He admitted that he had earlier received reports from other employees that Kasselder had been wearing Teamsters buttons and had been passing out authorization cards for that union. Powell also recalled hearing reports at various times that Kasselder had been converted from an hourly to a salaried status, and that he had, at some point, worked in the upstairs office area, rather than on the plant floor. Powell had no recollection as to when these bits of information were made known to him, but he admits that they eventually gave rise to "suspicions" that Respondent was knowingly furnishing resistance to Teamsters rival organizing efforts.

[15] This phrase was used by Cordova in a discussion with Kasselder shortly before the November 17 election. When Kasselder asked what Cordova meant by the expression, Cordova replied enigmatically that Kasselder should "talk to Frank Frauenfeld about it . . . ."

Conclusions

Respondent's conduct as found above from Kasselder's undenied testimony amounted to a knowing, cynical, and flagrant form of unlawful assistance to Teamsters during the preelection period. Cordova's awareness of, and cooperation with, the scheme to permit Kasselder to meet new employees and use company time to solicit for Teamsters is evident in virtually every exchange between himself and Kasselder reported above. It is moreover evident that the conspiracy between Respondent and Teamsters was known to, and condoned by, Respondent's agents at the corporate headquarters level. This corporate-level involvement was reflected in the cloak-and-dagger meetings between Kasselder and Lederer. It was further manifested in the pressure from "Philadelphia" directed to Cordova in order to appease Kasselder's overtime wage demands which itself occurred immediately on the heels of Kasselder's complaint to Teamsters Agent Frauenfeld and the latter's promise to straighten out the matter within "10 minutes." Also worthy of note here is Cordova's statement to Kasselder to the effect that Corporate Director of Industrial Relations Abrams was fully aware of Kasselder's in-plant work for the Teamsters.

Respondent argues, however, that the 6-month "limitations" rule contained in Section 10(b) of the Act bars the finding of an 8(a)(2) violation here. Respondent points out that Kasselder's testimony shows that Respondent aided his Teamsters solicitation activities by giving him plant tour assignments only during an 8- to 10-day period in the latter part of August (i.e., more than 6 months before the Union's March 7, 1979, charge). Acknowledging, however, that fraudulent concealment of an unfair labor practice by a charged party may not start the running of the 6-month clock until such time as the affected party is put on notice of the misconduct, Respondent argues further that Powell had information about Respondent's apparent role in assisting Teamsters through Kasselder well before Kasselder's "early October" revelations to Powell in this regard. Citing Powell's vagueness as to dates when he received earlier reports giving rise to "suspicions" about Respondent's assistance to Teamsters, Respondent argues from the surrounding circumstances that such "notice" must have been received at or around the time of Kasselder's accidental appearance on August 19 in Powell's room while seeking to meet with Lederer. Accordingly, Respondent contends that any charge filed more than 6 months after on or about that August 19 date must be barred by Section 10(b).

The General Counsel has recognized the potential 10(b) problem from the outset. All complaints in this area have specifically alleged that the Union "was not actually or constructively on notice of [the alleged

8(a)(2) conduct] until on or about February 1, 1979." This appears to have been an arbitrarily selected date, however, since the General Counsel's only proof as to when "notice" was gained by the Union was the testimony of Powell about his "early October" meeting with Kasselder, and no explanation was ever tendered for the selection of the February 1 "notice" date appearing in the complaint. The General Counsel now argues that Respondent's violations of Section 8(a)(2) were fraudulently concealed, and that the Union was not on actual or constructive notice of them until "early October," a date clearly within 6 months before the March 7, 1979, charge.

A treatise on the varying ways in which Section 10(b) may be applied is not required here. The Board, with the agreement of reviewing United States courts of appeal, has held that the 6-month limitations period does not begin to run until the party affected by unfair labor practices is on actual or constructive notice of the material events giving rise to a charge, thus effectively estopping a wrongdoer who has engaged in fraudulent concealment of his unlawful conduct from using such concealment to permit a 10(b) defense. The respective decisions of the Board and the Eighth Circuit in the AMCAR series of cases[16] including the analysis of Administrative Law Judge Plaine in Board AMCAR I, *supra*,[17] effectively support the statement in Board AMCAR II[18] that: "the 10(b) limitation period would commence to run at the time that the Unions had actual or constructive notice of the [complained-of act] . . . [and that] notice . . . must be clear and unequivocal. . . . [s]ince Section 10(b) is a defense, the burden is on Respondent to establish notice."

The facts concerning Respondent's unlawful assistance to Teamsters in August (and in September if one regards, as I do, Lederer's furnishing of an employee list to Kasselder, and Cordova's settlement of the overtime dispute as 8(a)(2) conduct) were known only to those involved in that conspiracy. It was inherent in the nature of the violation that its essence (i.e., the knowing subsidy by Respondent of the Teamsters organizing by giving Kasselder assignments which would enable him to solicit new hires before they had had an opportunity to hear appeals from the Union) could never be known to outsiders unless and until one of the coconspirators disclosed the same.

What the Union knew about Kasselder's activities prior to his early October revelations to Powell did not constitute evidence that Respondent was engaging in unlawful conduct. Absent evidence that Respondent was a knowing partner in Kasselder's card solicitation for Teamsters, the fact of his activities—even on company time—would be as consistent with those of a lawfully behaving Teamsters "volunteer" as those of an unlawfully behaving agent of Respondent.

It is suggested by Respondent that the Union, being admittedly suspicious about Respondent's possible involvement in Kasselder's activities for some indefinite period before "early October," could have gained knowledge of the material facts by making earlier contact with Kasselder who, presumably, would have been as forthcoming then as he proved to be in "early October." But this contention is speculative and fails to meet the 10(b) burden imposed on Respondent for two reasons: First, Respondent never showed by a "fair preponderance of the evidence"[19] that all the elements of fact which caused the Union eventually to confront Kasselder were known to it at some point more than 6 months prior to March 7, 1979 (i.e., before September 7, 1978). Second, Respondent failed to establish in any fashion that Kasselder would have been prepared to disclose his guilty knowledge to the Union prior to the September 7 date.

If anything, the record preponderates in favor of a contrary conclusion. All indications are that Kasselder remained a willing participant in the 8(a)(2) scheme and/or its concealment at least through the date in late September when he had the second overtime pay dispute with Cordova. He had his final meeting with Lederer at which time he expressed concern about the lack of Teamsters support in the plant sometime in the final days of August or the early days of September. He further clearly indicated his continuing identification with the Teamsters when he used Frauenfeld to intervene on his behalf to pressure "Philadelphia" and, in turn, Cordova, to obtain the disputed overtime pay in late September. Absent an explanation (which Respondent never attempted) about the late September episode, it is a fair inference that such appeasement of Kasselder was done as part of a continuing effort to cover up and further the original conspiracy.[20]

Noting finally that the Union did approach Kasselder only shortly after he let it be known around the plant of his disenchantment with the Teamsters, I conclude that the Union's failure to approach him any earlier derived from the reasonable assumption that Kasselder would not have disclosed then what he knew about the 8(a)(2) matter and that his publicizing in late September-early October of anti-Teamsters views provided the first reasonable opportunity for the Union to inquire into the details of Kasselder's earlier conduct. Accordingly, I conclude that Respondent failed in its burden of showing that the Union was, or could have been, on notice of Respondent's 8(a)(2) violative behavior at any date before September 7, 1978. The March 7, 1979, 8(a)(2) charge was therefore timely. It was also meritorious.

[16] *AMCAR Division, etc.*, 231 NLRB 893 (1977) (Board AMCAR I), enfd. 592 F.2d 422 at 429-431 (1979) (Court AMCAR I); *AMCAR Division, etc.*, 234 NLRB 1063 (1978) (Board AMCAR II), enfd. as modified 596 F.2d 1334 at 1351-52 (1979) (Court AMCAR II). See also *Strick Corporation*, 241 NLRB 210, fn. 1 (1979).

[17] 231 NLRB at 90-92.

[18] 234 NLRB at 1063.

[19] The burden suggested by the Eighth Circuit as to the "notice" issue in Court AMCAR II, 596 F.2d at 1351.

[20] Borrowing from metaphors which were in vogue among the conspirators in the Watergate affair, I infer that the payoff to Kasselder reflected Respondent's desire to keep Kasselder "on the reservation" and to prevent him from becoming a "loose cannon." This reflects Respondent's belief in the late September period that Kasselder was still prepared to conceal the 8(a)(2) violations; and it substantially negated the suggestion now urged by Respondent that, during or before late September, Kasselder would have candidly revealed the 8(a)(2) conspiracy if the Union had only taken the trouble to approach him on the subject.

B. *Preelection 8(a)(1) Allegations*

1. No-solicitation rule

It is alleged in the complaint and admitted by Respondent's answer and I therefore find that on or about August 21, 1978, Respondent promulgated the following written plant rule and regulation under the title "Causes for Dismissal":[21]

> 12. Soliciting, Vending, or collecting on company premises without prior approval of management.

Conclusions

It is argued by the General Counsel that said rule is facially invalid as an overbroad interference with, restraint, or coercion of employees in the exercise of their rights to engage in union or concerted activities; that the rule was discriminatorily promulgated in order to discourage activities then in progress on behalf of the Union; and that it was further enforced only as to activities on behalf of the Union and was ignored when other "solicitation" activities known to Respondent occurred in the plant.

The General Counsel is correct on all counts. The rule is classically overbroad in that, read literally, it bans union-related solicitation "on company premises" even in nonwork areas and during nonworktimes. *Republic Aviation Corporation* v. *N.L.R.B.*, 324 U.S. 793, 803–804 (1945); *Stoddard-Quirk Manufacturing Co.*, 138 NLRB 615 (1962); *Utrad Corporation*, 185 NLRB 434, 437, 439 (1970).

Even had the rule been drafted more narrowly to conform to the rights of employees to solicit or communicate on plant premises about union or other self-organizational activites during nonworking time, the timing of its introduction,[22] coupled with evidence of its enforcement (discussed below) relating to the treatment of Marion DeJong, and considered against Respondent's simultaneous financial subsidy to Teamsters by, *inter alia*, permitting Kasselder to solicit for Teamsters throughout the plant during working time, shows that the rule was discriminatorily introduced and applied in order to discourage support for the Union during its organizing drive then in progress. Accordingly, the rule violates Section 8(a)(1) on its face,[23] and further violates Section 8(a)(3) because of the timing of, and the circumstances surrounding, its introduction which had the effect of imposing a discriminatory term or condition of employment in order to discourage membership in the Union.

2. Alleged interrogations and shutdown threats

The complaint alleges that D&I Line Supervisor Roger Dowdell and Quality Control Supervisor Marlene Louden each made threats linking the selection of the Union with the shutting down of the Worland plant. In addition, it is alleged that Dowdell interrogated employees about their union preference or voting intentions in connection with the making of said threats.

A background discussion will set the stage: The Union and Respondent are currently parties to a master agreement[24] having a term of November 1, 1977, through February 15, 1981, covering a variety of bargaining units at several of Respondent's plants around the country. That master agreement contains, *inter alia*, at article I, sections 1 and 2, provisions for the automatic extension of the agreement's coverage for "employees of any plant of the Company at which metal cans, crowns, or closures are manufactured for whom the Union may during the life of this agreement be certified or recognized. . . ." Thus, as all parties agree, employees at the Worland plant would be entitled to receive wage rates and benefits set forth in the master agreement upon certification of the Union as their representative.[25] As the Union's chief organizer, Powell, conceded, the Union's preelection campaign at Worland relied heavily on its ability to point to the wage rates contained in the master agreement and to show Worland employees working in the same or similar classifications that they would earn a specified amount more than they were, for the most part, then earning if they selected the Union.

There was testimony by several employees that Dowdell (frequently) and Louden (once) expressed views to the effect that the Pepsi (Admiral) plant would cease buying Respondent's steel cans and would switch to less costly aluminum cans from another producer "if the Union got in," with the result that Respondent, whose entire output went to the Pepsi plant, would have to shut down operations.

Employee Gene Russell testified that, on several occasions before the election, he witnessed and/or participated in discussions with Dowdell and groups of employees on the subject of the Union's advent. Russell's initial summary testimony was that Dowdell "would say that Pepsi is going to buy the aluminum cans if we go union, and we don't want to go union because they will buy aluminum cans. If they buy aluminum cans, you are out of a job." Russell also recounted a specific event on or about the evening of November 1 when Dowdell telephoned Russell at the latter's home and said to him[26] that Pepsi had received a load of aluminum cans and "if we voted in the Steel Workers contract, that was just one of many truckloads of aluminum cans they would start buying because they would be cheaper."

[21] The quoted rule is from plant handbook captioned "Plant Rules and Regulations" which was evidently introduced into the plant on or about August 21.

[22] Five days after the Union filed its election petition on August 16.

[23] The facial invalidity of the rule is not rehabilitated by the fact that it leaves room for solicitation after obtaining the "prior approval of management." To exercise this potential option, a would-be union solicitor would have to disclose his intentions and predilections to management—in effect, be required to submit to interrogation about his or her protected concerted activities as a precondition to exercise of those rights. *AMC Air Conditioning Co.*, 232 NLRB 283, 284 (1977).

[24] Resp. Exh. 1.

[25] As noted, *supra*, the Union's certification at the Worland plant is being tested by Respondent in pending enforcement proceedings under Sec. 8(a)(5). In the interim, Respondent is not applying the substantive wage and benefit provisions of the master agreement to the Worland unit and is dealing with those subjects on a unilateral basis.

[26] The following quote is from Russell's second, more complete, version.

On cross-examination, however, referring to several conversations with Dowdell in which employees Alfred McLelland and Marion DeJong participated, Russell had this exchange with counsel for Respondent:

> Q. Isn't it true that Mr. Dowdell told you that if the Steel Workers won and the master contract was applied and the wages had to be increased 30 or 40 per cent,[27] that the labor costs could be so high here in Worland that Crown may lose the Admiral Beverage Company?
>
> A. He did say that.

Employee Al McLelland recalled one conversation before the election with Dowdell in which, "It was getting hot and heavy, the discussion back and forth . . . Roger told us[28] that Pepsi—if the union got in, Pepsi wouldn't buy those cans and that we wouldn't have any outlet for our cans if the union got in."

During an earlier conversation between Dowdell and McLelland alone, McLelland reported that Dowdell had asked McLelland if he favored the Union and further had asked him why. Upon McLelland's reply that he thought that employees were not getting paid enough and that the Union's contract was "excellent," Dowdell replied that he did not "think that the company would ever pay those wages that was in the master contract."

Marion DeJong reported a conversation on or about November 2 participated in by Dowdell, Gene Russell, Al McLelland, and himself. There, according to DeJong, "Mr. Dowdell was telling us that if the union came in, that Pepsi Cola would stop buying our cans and go to aluminum cans." During a conversation involving the same participants about a week later, DeJong reports that Dowdell, in a discussion of the Union's chances of winning the election, "stated that he was worried about the union winning the election, because he thought if they did, the company would be closed."

Kurt Sontheimer reported an incident on or about November 13 when Dowdell approached Sontheimer at the latter's work station and asked Sontheimer how he intended to vote in the election. When Sontheimer replied that he "didn't know," Dowdell allegedly replied that "we should give the company a chance to get its feet on the ground, and if the union came in, Pepsi would shut us down so fast it would make our heads spin."

The final alleged "shutdown threat" was made by Marlene Louden who, according to Sontheimer, stated "if the union came in, Pepsi or—yeah, Pepsi would buy aluminum cans cheaper elsewhere. . . . Pepsi would shut us down."

Conclusions as to Shutdown Threats

Dowdell substantially denied the above accounts of statements regarding plant shutdowns. He was a singularly unimpressive witness, having a tendency to generalize and characterize what his "position" was about the election without ever relating specifically what he recalled having said in any given conversation. I therefore accord no weight to his conclusionary denials as to these "shutdown" and related "interrogation" allegations. Louden was not called to testify. I therefore find that the above employees' accounts of what the two supervisors said are substantially true, albeit with the reservation that it appears that none of them, with the mild exception of Russell, offered contextually complete versions of the conversations in question. Since it is evident that Russell, McLelland, and DeJong were referring with varying degrees of particularity to the same conversations with Dowdell in which they all participated, it is doubtful that any single version may be taken as literally accurate. Given Russell's concession on cross-examination that Dowdell had, in fact, clearly articulated the premises underlying his concern that Respondent "might" move to shut down (i.e., if Pepsi, faced with higher charges for Respondent's product due to substantial increases in Respondent's labor costs arising from the application of the master contract following the Union's election victory, were to discontinue doing business with Respondent), it is apparent that Dowdell was making a personal prediction about what might happen if a given scenario came to pass. It is equally apparent that Dowdell was not, as the General Counsel argues, threatening employees that Respondent would retaliate against employees by shutting down the plant in the event of an election victory by the Union. I draw similar conclusions about the context in which Louden is alleged to have made the statement to the effect that the Union's election might mean that Pepsi would switch to the use of aluminum cans and, therefore, "Pepsi would shut us down."

Under these circumstances, I view the challenged remarks as predictions privileged under Section 8(c) of the Act, rather than as unlawful threats. The Board's Decision in *Blaser Tool & Mold Company, Inc.*, 196 NLRB 374 (1972), is instructive in this regard. There, the Board found violative of Section 8(a)(1) employer statements in speeches to massed employees that the employer's principal customer, Winter Co., might withdraw patronage in the event the union were to win a forthcoming election. Emphasizing that "employer predictions of adverse consequences arising from sources outside his control are required to have an objective factual basis in order to be permissible under Section 8(a)(1)," the Board found it critical to the violation that there was "no factual basis for . . . suggesting the possibility that Winter Co. would withdraw its patronage if the employees voted for the Union." *(Ibid.)*

By contrast herein, giving particular weight to Russell's concessions on cross-examination noted above and the fact that the challenged supervisory statements occurred in a context where the Union's major campaign pitch was that its certification would, in effect, automatically result in substantial wage increases for unit employees by virtue of the extension to the Worland plant of its master contract, Dowdell's and Louden's remarks about plant shutdown possibilities linked to loss of Pepsi business were sufficiently grounded in an "objective factual

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[27] Russell had admitted that, from what he could tell from reviewing the master contract, he would receive approximately $8 per hour, or about 45 percent more than his preelection hourly rate of $5.50, if the Union were to become certified.

[28] The others present, according to McLelland, were Gene Russell and Marion DeJong.

basis" to be treated as noncoercive predictions or expressions of opinion. Accordingly, it is recommended that the complaint be dismissed insofar as it alleges that Dowdell and Louden made unlawful threats that Respondent would close its plant if the Union won the election.

Conclusions as to Interrogations

As to complaint allegations regarding unlawful interrogations by Dowdell regarding employees' union activities and sympathies, there is ample evidence to sustain those counts. Dowdell's questioning of McLelland before the election as to whether McLelland favored the Union and his reasons therefore have been reported, *supra*. In addition, there is credible testimony from employee Yvonne Hartley that Dowdell approached her at her work station in mid-November before the election and asked her if she would vote "neither" in the election. She said that she could not—that she came from a "pretty strong union family" and that she "felt the same way." Hartley reports that Dowdell pressed the issue "several more times" but Hartley remained firm.

There was no legitimate purpose shown for Dowdell's efforts to ascertain particular employees' views concerning the selection of a bargaining representative. There were no assurances against reprisals made before the substantive inquiry began. Dowdell's inquiries occurred during the same period that Respondent was engaged in other unfair labor practices in an effort to frustrate support for the Union. They also occurred against the background of Dowdell's clear expressions of hostility towards the Union's advent. Based on all the foregoing and the record as a whole, I find that the cited interrogations by Dowdell had a tendency to interfere with, restrain, and coerce employees in the exercise of their rights guaranteed in Section 7 of the Act. Cf. *Struksnes Construction Co., Inc.*, 165 NLRB 1062, 1063 (1967).

The complaint alleges that Respondent's agents committed further violations of Section 8(a)(1) at various times in the months following the November 1978 certification election. These complained-of acts are related to alleged discriminatory treatment of employees who were allegedly discharged in violation of Section 8(a)(3). Those matters are treated incidentally with findings and conclusions hereafter pertaining to the wrongful discharge allegations.

C. *The 8(a)(3) Allegations and Related 8(a)(1) Allegations*

1. Discriminatory treatment and eventual discharge of Marion DeJong

The complaint alleges that DeJong, the most conspicuous and vocal employee representative of the Union and its local president, was subjected to a series of discriminatory acts, including a shift reassignment, demotion, discipline, and, ultimately, discharge, all in retaliation for his union and related concerted activities and his role in the filing of certain unfair labor practice charges, and that Respondent thereby violated Section 8(a)(1), (3), and (4) of the Act. While DeJong was one of the last to be fired of the group of employees who are alleged to have been wrongfully terminated, his experience throughout the period in question is detailed first, in order to provide a context for discussion of the merits of the other discharge allegations and because there is some degree of factual interrelationship between DeJong's experiences and those of other alleged discriminatees.

DeJong was hired on October 2, 1978, as a maintenance machinist working under the supervision of Donald Peterson, the master mechanic and machine shop supervisor.

Before the election, DeJong distinguished himself as a prominent supporter of the Union, *inter alia*, by speaking up on the Union's behalf in meetings chaired by corporate official Harold Abrams who was evidently in charge of Respondent's preelection campaign activities. On more than one occasion, Abrams came to visit with DeJong in the machine shop after such campaign gatherings and the two casually debated the need for a union at the Worland plant. During one such visit, Abrams asked DeJong whether he would like to be a plant manager.[29] DeJong replied to the effect that he would have more authority as a union president than as a plant manager. This exchange evidently emerged from a discussion in which DeJong had complained about certain undesirable plant conditions which the Worland plant manager had been only marginally able to correct due to his limited operational authority within Respondent's corporate bureaucracy.

On November 27, 1978, DeJong was elected by the Union's members at the Worland plant to serve as the interim president[30] of a new local created and chartered by the Union to represent the new bargaining unit. During the period just before the interim election of DeJong and other local officers, Respondent's director of corporate security, Lederer, engaged in a background investigation of DeJong. This is evidenced by Lederer's letter of November 21, 1978, to one of DeJong's previous employers which DeJong had listed on his original application with Respondent.[31] Lederer's inquiry letter, apparently one of several sent to DeJong's previous employers, enclosed a copy of DeJong's employment application with Respondent and sought the recipient employer's comments as to whether DeJong's application contained "any factors noted that are not correct . . ." and invited reply by collect telephone call to Lederer at Philadelphia headquarters. DeJong learned of this inquiry process only because one of the recipients, B&B Hardware of Battle Creek, Iowa, was a business owned by DeJong's father in which DeJong had worked. DeJong's father passed on to DeJong the inquiry letter and the enclosed copy of DeJong's employment application which Lederer had enclosed. That copy contained a handwritten entry next to the name of another of DeJong's previous employers, Cowboy Timber Co. The entry had not been on the application when DeJong had originally submitted it to Respondent. The entry read:

[29] DeJong was a journeyman machinist and tool-and-die maker and had prior managerial experience as an assistant plant manager for an earlier employer.

[30] The interim position was to be effective until elections to full-term positions could take place in late April 1979.

[31] G.C. Exh. 19, addressed to "B&B Hardware" discussed below.

LEFT HIM GO NOT QUITE ENOUGH
FOR AMT. PAY'G.
NONUNION

In the absence of explanation by Respondent, I infer that this entry was made by Lederer or his agent in connection with the investigation into DeJong's employment background. I further infer from the "Non Union" entry that Lederer's office was at least as interested in DeJong's prior involvement in, or association with, union activities as in whether or not DeJong had made truthful statements on his employment application. In addition, there being no contrary evidence from Respondent, I find that Lederer's background inquiry made over 1-1/2 months after DeJong had begun employment with Respondent, was not part of any standard routine.[32]

On December 6, 1978, DeJong's supervisor, Peterson, completed a written evaluation on DeJong in which he rated DeJong as "good" (the highest rating level) in all rating areas. Peterson confined his narrative comments to the statement: "Employee is doing a good job."

Beginning later in December 1978, and continuing thereafter until his discharge, DeJong's union activities became more visible and had direct effects on Respondent's Worland plant operations. On December 17, DeJong filed a complaint[33] over allegedly unsafe and unhealthy working conditions at the Worland plant with the Wyoming Occupational Health and Safety Department (hereafter called OSHA in conformity with terminology used by witnesses and counsel throughout the hearing and on brief and notwithstanding its acronymic inappropriateness). Cordova admitted that OSHA representatives had told him that DeJong had filed the OSHA complaint. His successor, Lester, denied ever gaining such knowledge. I find to the contrary, in the light of the record as a whole.[34]

On or about January 1 or 2, 1979,[35] DeJong went to Cordova's office with a tape recorder, seeking definite answers to recurring employee inquiries regarding the scope of Respondent's health insurance program. According to DeJong's undenied and therefore credited testimony,[36] Cordova told DeJong that he had no need for this information, that Cordova did not know the answers to DeJong's questions anyway, and that DeJong should "just trust the company."

On January 4, as noted above, three Wyoming OSHA inspectors conducted an extensive inspection of the Worland plant, with DeJong accompanying them, despite Cordova's objection, throughout the 6-hour tour.[37]

On January 5, DeJong met again with Cordova in the latter's office to protest the discharge of an employee named Yvonne Harley[38] and to have Hartley reinstatted, with an apology from Hartley's supervisor, Marlene Louden.

Also on January 5 and 6, DeJong was assigned to tear out and reinstall sewer drains in the executive washroom—an unprecedented assignment for a machinist, according to DeJong. While this was not specifically alleged as a discriminatory act against DeJong for proscribed reasons, the General Counsel announced at the hearing that, while he would seek no unfair labor practice finding regarding the incident, he would argue on brief that the assignment could be considered as a form of "background" evidence (apparently showing a pattern of Respondent's humiliating and disparaging DeJong in the hopes that he might quit). In substantial agreement with the General Counsel, I find that the assignment of DeJong to this task was unusual in that his prior machinist's training would not make him a likely candidate for such plumbing assignments, nor would his more customary assignments during that period, which primarily involved maintenance and repair of production machinery.[39]

[32] Cordova, Respondent's plant manager at the time, testified that he was not aware that any background investigation on DeJong had been undertaken by Lederer or anyone else at Respondent's corporate level. He further stated that he had "no knowledge" of any "company policy" of investigating applicants' or employees' job histories. Cordova's successor, Donald Lester, who came to Worland as plant manager in late January-early February 1979, testified similarly. Respondent's counsel conceded at hearing that no copy of Lederer's inquiry letter appeared in the personnel file on DeJong which was maintained at the Worland plant.

[33] G.C. Exh. 26.

[34] In addition to Cordova's admission, I am influenced by these additional factors in concluding that Lester and other agents of Respondent were well aware that DeJong was responsible for the original OSHA complaint and its subsequent prosecution: DeJong affirmatively indicated on the OSHA charge that he did not "desire to have [his] name withheld from the Employer." DeJong made an issue out of being permitted to accompany Cordova and the OSHA inspector during the January 4, 1979, inspection, brushing aside Cordova's suggestions that DeJong was not needed on the tour, and pointing out specific hazards in the plant during the tour. DeJong subsequently sought and received permission to leave work to attend a hearing in Cheyenne in March on the citations which OSHA later issued against Respondent. At that hearing DeJong was accused by Respondent's counsel of being a "liar." Respondent's attorney also alleged that the underlying OSHA complaint had been "brought up simply to try to get the union into the plant" (crediting DeJong's undenied testimony). DeJong issued a letter on April 25, 1979, which Respondent's agents (including Lester) admittedly saw (discussed further below), in which DeJong reminded readers that he had been responsible for requesting the OSHA inspection.

[35] All dates hereafter are in 1979 unless otherwise specified.

[36] DeJong was, throughout his lengthy testimony, a careful and seemingly reliable reporter of the facts. The major portions of his material testimony were not disputed. In those particular instances of credibility conflict as between DeJong and one or more of his supervisors, I credit DeJong, due to his more impressive demeanor and in the light of the record as a whole leading to findings made hereafter that DeJong was subjected to extraordinary supervisory scrutiny and nonroutine attention by Respondent's managerial hierarchy, including all the regional and corporate level—all due to his union and other protected concerted activities. These latter features persuade me that testimonial conflicts between DeJong and his supervisors regarding certain incidents discussed below frequently resulted not from genuinely differing recollections, but rather from those supervisors' (often seemingly reluctant) efforts to adhere to the hostile "line" on DeJong established by Respondent's top management.

[37] The inspection resulted in OSHA's issuance of approximately 60 separate citations of violations, which were received at the Worland plant at or near February 1, coinciding with Lester's arrival in Worland to take over from Cordova as plant manager. In addition to requirements that the cited violations be abated or corrected, OSHA also sought fines from Respondent of slightly more than $5,000. As a result of subsequent hearings in which Respondent sought to have the fines dismissed, the fines were reduced to a total of approximately $4,200 (per Lester).

[38] The principal subject of the first of the charges filed herein (see statement of the case, *supra*), but whose case was dismissed by Region 27, as the parties stipulated.

[39] To rebut that inference, DeJong's then supervisor, Donald Peterson, testified that he had also assigned another machinist, Steiner, to do such

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From the totality of the evidence, I agree that the plumbing assignment marked the start of a campaign of harassment and discrimination against DeJong because of his emerging visibility and effectiveness as the Union's chief in-plant representative.

On January 6, while DeJong was replumbing the executive washroom drains, fellow employee Lloyd Bryce came to the washroom and asked DeJong to assist him in repairing a baler machine located at a remote end of the plant.[40] DeJong refused, saying that Peterson was his supervisor and was the only person from whom he could take orders (Bryce was a nonsupervisory, hourly paid "leadman" in the warehouse area). Bryce became "excited, almost hysterical" and DeJong told him to "go to hell, drop dead, get out of here." Bryce said that he would "bury" DeJong and that he would "take up a collection to buy [DeJong] a pine box." DeJong then observed Bryce go to Supervisor Peterson and follow Peterson around the plant for a considerable time "screaming and yelling" that DeJong would not do what Bryce had asked him to do.

On January 7, DeJong went to Cordova's office and demanded that Cordova take some action against Bryce for threatening DeJong's life. Cordova did not pursue the matter, so far as this record shows, although he told DeJong he would "look into it."[41]

On January 8, DeJong observed Bryce "going up and down the production line during working hours collecting signatures on a petition to have [DeJong] removed from office as president of the local." Employee Al McLelland likewise credibly testified that he was personally approached by Bryce to sign such a petition "in early 1979" or "sometime between December and March." This occurred at McLelland's work station during working hours. McLelland stated, and I find, that Bryce spent approximately 15 minutes in McLelland's work area soliciting the signatures of the three other employees in that area, and saying that he did not believe that DeJong was "representing the people."[42] McLelland noticed at least 10 other signatures on the petition, thus suggesting that Bryce did not go solely to McLelland's work area for signatures. The record does not affirmatively disclose that any management agent was aware of Bryce's activities in this regard but, from the fact that they were so openly conducted, I infer that such activities could not have escaped the notice of one or more of Respondent's supervisors.

It is admitted that, around mid-January, Peterson reassigned DeJong from his day-shift job to night-shift maintenance assignment under the supervision of D&I Line Supervisor John Christensen. Peterson admittedly told DeJong at the time that the switch was necessary because night-shift maintenance machinist Dick Steiner was required to go into the hospital for surgery but that, when Steiner returned, DeJong would be transferred back to first shift.

As earlier noted, citations from Wyoming OSHA were received at the Worland plant on or about February 1. Lester, newly arrived as plant manager, took responsibility for supervising correctional measures.[43] Most of the correctional work fell to Supervisor Peterson to take care of. Peterson, in turn, assigned much of the correctional work to DeJong. Since DeJong was by then working on the second shift, Peterson left lists of job tasks with Second-Shift Supervisor Christensen for assignment to DeJong. In addition to those tasks, DeJong likewise received other assignments from Christensen.

Substantial numbers of written reprimands, critiques, and "special performance reports" thereafter began to appear in DeJong's personnel file. On February 3, acting on report from Christensen, Peterson issued identical special performance reports to both DeJong and Kasselder growing out of an incident in February in which Christensen had sought to obtain tools or equipment from the tool supply room (Kasselder's area of responsibility) but had been unable to do so because Kasselder was on a break and had locked the room. Christensen saw Kasselder and DeJong returning from the break together 15 minutes late according to Christensen).[44] Both Christensen and DeJong gave roughly harmonious accounts of what happened next. Christensen complained that he did not wish to "babysit" in the plant, adding

plumbing work. Peterson's testimony here was suspiciously vague. Peterson also impressed me as being highly resentful of DeJong, based primarily on DeJong's emerging militance as an employee spokesman, all further discussed and detailed below. Peterson was also directly contradicted on this point of testimony by building maintenance man Mike Eaves, whose responsibilities included plumbing maintenance. Consistent with DeJong's assertion, Eaves credibly testified, and I find, that DeJong was the only machinist ever assigned to do such plumbing work during periods material to the instant case.

[40] Uncontradicted and credited testimony of DeJong as to this and following related incident. Bryce, who figured closely in another incident discussed below leading to Kasselder's discharge, was not called to testify.

[41] Supervisor Peterson testified that Cordova never asked him about the incident. There is no other indication that DeJong's complaint about Bryce was pursued.

[42] Bryce had transferred to the new Worland plant after having previously worked for Respondent at its La Mirada, California, plant. He had been a member of the Teamsters local which represented employees there (according to Plant Manager Lester, who had been in management at La Mirada immediately before coming to Worland).

[43] Some months later, in early May, employee William Tibbs credibly testified that he was summoned to Lester's office after he had complained to fellow employees in the presence of a supervisor about the need to "get OSHA in here" to take care of some ventilation problems. In the presence of Personnel Director Taylor and a man introduced as Respondent's "OSHA expert," Lester told Tibbs that Respondent was working to correct problems as fast as possible, and that "OSHA could not get the work done any faster than [Respondent]" and, finally, "that he [Lester] didn't like employees agitating other employees. He would not put up with an agitator in his plant and he would fire them." Neither Lester nor any other agent of Respondent present denied having made such remarks, although both Lester and Taylor testified at length on other subjects.

[44] Christensen was certain it had been an evening "lunch" break which is supposed to last 30 minutes, but that DeJong and Kasselder had taken 45 minutes. DeJong denied having taken an extended break, but stated that the incident occurred after a coffeebreak, commenting that, had it been a lunchbreak, he and Kasselder would have punched in and out on the timeclock (the undisputed lunchbreak practice) and company time records would have told the tale. DeJong and Kasselder both testified that they had taken only the scheduled 15-minute break. No timecard records were introduced and I therefore discredit Christensen's testimony that this occurred after lunch break. DeJong's and Kasselder's testimony that they did not overextend the coffeebreak seemed credible. Christensen's contrary testimony is not credited, considering the overall findings herein that Respondent's agents regularly invented or exaggerated misconduct claims against DeJong, and considering further Christensen's unease and unimpressive demeanor while testifying.

that he had needed a part from the toolroom and had been unable to get it due to Kasselder's having locked the room and then having taken an extended break. Kasselder and DeJong heatedly denied being late in returning from their break. Kasselder and DeJong testified that they believed that the incident had been put to rest with Kasselder's promise that he would leave toolroom keys in a supervisor's office when he took breaks. DeJong states that Kasselder had asked Christensen "just what the hell he [Christensen] meant by talking to us the way he was." DeJong also admits that he "questioned [Christensen] on his attitude." Christensen was no more specific, but stated that "they started giving me a bunch of hassle about they didn't—you know, they hadn't overextended their . . . break and they got a little upset. And Jerry went ahead and got me the part, and then I left."

All three individuals left the clear impression from their testimony that there was no intention on Christensen's part to pursue the matter. On February 3, however, Peterson came to Christensen, saying that he had heard about the incident. Christensen testified that he "talked it over" with Peterson (being no more specific) and that Peterson "wrote them up."

Peterson then met with DeJong and Kasselder, with Christensen also present, and gave the two employees identical "write-ups" which they refused to sign and which stated in material part:

> This employee is not following lunch and break schedules as posted & is taking excess time over that allowed. When notified of this by Shift Supv. the employee became argumentative & abusive.[45] This attitude has been reported on several occasions & any further occurrence will result in additional disciplinary action or termination.[46]

Dejong credibly testified without contradiction that he asked Peterson during the meeting which supervisors he had been "abusive" towards and that Peterson mentioned Frank Pacheco. DeJong further credibly testified that he later approached Pacheco and asked him if he had ever been abusive towards him and that Pacheco replied: "Never."[47] DeJong further credibly testified that he asked Christensen just after the meeting ended why he and Kasselder had been given the writeup. Crediting DeJong, Christensen replied that he had not written the report, that he had not given information for it "to the front office," and that he was "sorry it happened."[48]

Peterson was called to explain what had motivated him to write identical accusations about both DeJong and Kasselder as having engaged in a pattern of excessive breaks, and having engaged in a pattern of "argumentative and abusive" behavior towards supervisors. I found his explanation to be more revealing of a tendency towards biased and exaggerated claims than reflecting that such an alleged pattern truly existed. Peterson did not offer a single example of previous "late break" infractions by either employee. He recalled two reports which he had heard about Kasselder's having been "abusive" towards supervisors—one linked to the Pacheco incident (see fn. 47, *supra*), and another linked to an incident with Superintendent Leo Kiker which had never been the subject of a warning or reprimand. The only items specified involving DeJong in this regard were (1) that both Kasselder and DeJong had once been reported by Supervisor Marlene Louden to have "made statements to her that were off color, rather bawdry [sic] language";[49] and (2) that DeJong, in meeting with Cordova and Louden as previously reported to seek the reinstatement of Yvonne Hartley, had referred to Louden as a "broad" in demanding that Louden apologize to Hartley, and that DeJong was "abusive to the plant manager" (Cordova) in the same incident. Peterson admitted, however, that he had talked with Cordova about the matter, that Cordova had told Peterson that the situation had been "resolved," and that Peterson should "let it go."[50]

Finally, and further revealing in my opinion of Peterson's tendency to exaggerate, he cited as further examples of DeJong's being "argumentative" and "abusive" towards members of management problems between DeJong and two other employees, Lloyd Bryce and Gary Lee. The problem with Bryce arose from the same incident in which Bryce had threatened to "bury" DeJong and take collections for a "pine box" for him. As to Gary Lee, Peterson explained that Lee had suspected DeJong of being responsible for certain offensive words that had been chalked on Lee's toolbox.[51]

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[45] Peterson claims that Christensen used the specific words "argumentative and abusive" in describing DeJong's and Kasselder's conduct. Christensen specifically contradicted this, saying he told Peterson only that the employees had denied overextending their break and had given him "a little hassle." I credit Christensen on this limited point.

[46] Resp. Exh. 2(d).

[47] Pacheco did not testify. There is indirect evidence in the record suggesting, however, that Kasselder had much earlier had an angry confrontation with Pacheco about the way Pacheco was treating Kasselder's wife, who also worked at the Worland plant.

[48] Christensen did not directly deny these remarks, although he was asked by Respondent's counsel whether he had spoken with both DeJong and Kasselder during which time they had stated that they thought there had been a "settlement" or "understanding" on the previous day. Christensen replied in the negative, as he also did to the next broad question:

> After the meeting that you attended with Mr. Peterson and Mr. Kasselder and Mr. DeJong, outside of that meeting was there any other conversation that you had with Mr. Kasselder or Mr. DeJong on February 3 about what happened the day before?

These questions were inadequate to permit Christensen to state whether or not he had made the specific remarks which DeJong attributed to Christensen during the brief exchange between them after the meeting in Peterson's office. DeJong's testimony therefore stands uncontradicted and I find it believable for this reason, as well as because it seems clearly likely from all the evidence that Christensen never did, in fact, expect the incident of the previous day to result in formal discipline.

[49] No further details were offered. Louden was not called to testify.

[50] DeJong credibly testified, and I find, that he did not refer to Louden in those terms in the meeting with Cordova and Louden regarding Hartley's discharge. Louden never testified. Cordova did not testify on that subject. It is further noted in passing that DeJong's meeting with Cordova and Louden on the matter of Hartley's discharge was activity classically protected by Section 7 of the Act. Even assuming, *arguendo*, that DeJong had made an impolite reference to Louden in that meeting, he would not thereby forfeit the protection of the Act. To the extent that Peterson was admittedly influenced by that alleged incident in issuing discipline to DeJong on February 3, that discipline violated Sec. 8(a)(1). *Bettcher Manufacturing Corporation*, 76 NLRB 526, 527 (1948); *Red Top, Inc.*, 185 NLRB 989, 990 (1970); *Prescott Industrial Products Company*, 205 NLRB 51, 52 (1973).

[51] Lee, like Bryce, openly challenged DeJong's candidacy for reelection as the Union's president in the late April full-term elections. (Lee

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DeJong denied being responsible for defacement of Lee's toolbox and Peterson admitted that he had no evidence that DeJong was the culprit. Nor did Peterson explain how DeJong's poor relationship with Bryce and Lee—employees who were politically opposed to DeJong's conduct of his union presidency—qualified as evidence of an alleged prior tendency of DeJong to be "argumentative and abusive" towards members of management.

Peterson was equally implausible in explaining why he drafted for inclusion in DeJong's personnel file a "foreman's incident report" dated March 13.[52] DeJong credibly testified that he had never seen that document before the instant hearing and further stated that its subject matter had never been discussed with him by Peterson. Peterson never testified otherwise. I therefore find that its contents were never made known in any fashion to DeJong until the hearing. The report stated in pertinent part:

> The above named employee was spoken to today by the undersigned regarding his attitude toward his job and other employees in the dept.
>
> Statements have been made to other employees that are causing hard feelings between other workers. This negative attitude is disrupting the operation of the machine shop.

Peterson claims that two or three incidents prompted this memorandum: On one occasion employees Mike Eaves and Dick Steiner allegedly complained to Peterson about receiving an assignment to perform some OSHA-related repairs, asking, "Doesn't Marion [DeJong] have to do any of this stuff?" On another occasion, Steiner allegedly complained to Peterson that DeJong "was telling him that Marion was going to take first shift away from him, that he was going to take his lead man's job [see findings below] and some other things that I don't recall right off." On another occasion, Eaves allegedly complained that DeJong was "treating [the job] as a joke, that Marion had said to him that he should slow down his work and try to draw some of the job out more."

Steiner never testified. Eaves substantially denied Peterson's testimony in this regard, recalling only that DeJong, as well as many other of his fellow employees, made joking remarks about Eaves' advanced years, such as, "Pop, how come you work so damn hard?" From the fact that Peterson's vague testimony only barely suggests grounds for making out secret memorandum accusing DeJong of harboring a "negative attitude" as it was causing hard feelings and was disrupting the "operation of the machine shop," and from its lack of corroboration, and from other findings above and below showing that Peterson resented DeJong's "attitude" as it was manifested in union and other protected concerted activities, I conclude that Peterson was again grasping for *post hoc* rationalizations for the March 13 "incident report."

On March 17, in the presence of at least five other employees, DeJong was followed into the machine shop toolroom by Gary Lee (see fn. 51, *supra*). DeJong, corroborated by other employees present, credibly testified that Lee carried a section of iron pipe, brandishing it at DeJong and threatening to "break [DeJong's] hands and arms and legs." Lee blocked the doorway and "carried on in this vein for approximately five minutes" while accusing DeJong of breaking into his toolbox. DeJong denied the accusation and, being suspicious that Lee was playing the role of provocateur for Plant Manager Lester, told Lee that he should "go tell Mr. Lester that his plan was not going to work, that [DeJong] was not going to take a swing at him, he could leave."[53] Lee lowered the pipe and left the area. Within 30 minutes of the incident, DeJong told Supervisors Christensen and Pacheco what had happened. Before anything could be discussed in detail, DeJong and others were called into a meeting with Supervisor Kiker on an unrelated matter. DeJong attempted to bring up the matter of Lee's threats, but Kiker stated that he could "not handle it" in the meeting. DeJong again pursued the matter with Christensen, Pacheco, and Kiker after the meeting. Kiker said that he would take it up with Plant Manager Lester. DeJong returned to his work area and also reported Lee's threats to Peterson. DeJong also filed charges with the Worland police on the same day. Nothing further came of the matter. Peterson eventually told DeJong that management would not pursue it because the incident had not been witnessed by any supervisors.[54]

In mid-March, in anticipation of the scheduled OSHA hearing in Cheyenne, DeJong had sought permission from new Plant Manager Lester to leave work to attend the March 20 hearing as the employees' elected safety representative. After indicating that he would have to check into the matter, Lester told DeJong on March 19 that he could have off the second half of his evening shift on March 19 and the first half of the same shift on March 20. DeJong then drove all night to reach Chey-

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was the candidate for president on an opposition slate.) In early March, Lee petitioned unsuccessfully to be named the employees' representative at the scheduled OSHA hearings instead of DeJong. Undisputed evidence discussed further below shows that Lee threatened DeJong's life with an iron bar in early March in accusing DeJong of tampering with his toolbox. DeJong again sought from management some correctional action against Lee, just as he had with Bryce, but to no avail. It appears that this incident was what Peterson was referring to as further support for his February 3 reprimand over DeJong's "abusiveness," even though it occurred about a month after February 3. This is further indication that Peterson was straining for justification for the issuance of the February 3 reprimand.

[52] Resp. Exh. 2(f).

[53] DeJong's suspicions that Respondent was prepared to use employees as *agents provocateurs* to set him up were not as farfetched as they might seem. Respondent was not above using employee agents to disrupt the Union's efforts to represent employees at Worland, as is demonstrated by the use of Kasselder in the preelection period. In addition, there is undisputed evidence that David Murdock, of Peddal, Inc., sought to provoke violence during a demonstration sponsored by the Union outside the plant entrance to protest Respondent's alleged unfair labor practices and to achieve consumer boycott of Respondent's product. A report to Director of Corporate Security Lederer from the files of Peddal, Inc. (G.C. Exh. 35(c)), states (referring to a "road block" manned by employee supporters of the Union): "Dave *went through the roadblock several times thrying [sic] to rile them*, but nothing happened." (Emphasis supplied.)

[54] Credited and uncontradicted testimony of DeJong. Lee did not testify. From cross-examination of DeJong by Respondent's counsel, it appears that, shortly after the late April internal union election, Lee was arrested by local police and charged with an unrelated larceny offense and he disappeared from the Worland area.

enne over 300 miles from Worland and participated along with Respondent's representatives and attorney. The OSHA hearing was apparently intended to result in some informal adjustment of the cited violations. In addition to Respondent's attorney calling DeJong a "liar" about safety violations and opining that the charges had just been a pretext to "bring the Union into the plant," that attorney also told an OSHA commissioner, responding to the question whether Respondent had a policy of "writing up" employees for safety violations, that Respondent had no such practice, but rather "they talk to them, because they are a very informal company."[55] The hearing was called off, apparently because of the many areas of controversy. The OSHA commissioner told Respondent's representatives that they could have a formal hearing at a later date.

In the meantime, Steiner, whose hospitalization had supposedly required Peterson to transfer DeJong to the seoond shift, had returned to work about a week before the OSHA hearing. Peterson assigned Steiner to the first shift. When DeJong asked why, Peterson explained that Steiner was an expert welder who was needed to fabricate OSHA-required guards for the overhead belt in the spray area. Peterson did not explain why this required Steiner to be assigned to the first shift.[56]

When DeJong returned from the OSHA hearing on March 20 in time to complete the second half of his evening shift, he received instructions left by Peterson and passed through Christensen to fabricate spray area guards (i.e., the task which Peterson had earlier told DeJong he was reserving for Steiner, due to the latter's welding experience, to perform on the day shift). The lack of such guards had been one of the items discussed that day at the OSHA hearing. DeJong asked for instructions from Christensen as to what kinds of guards Peterson wanted. Christensen did not know. DeJong made "temporary guards" from some scrap material that night and enclosed the belts with them.

On March 21, shortly after returning from the OSHA hearing, DeJong spoke with Peterson, complaining that he was being kept on the night shift and was being "set up" by receiving assignments which could not be performed adequately with available material (apparently a reference to the sprayer belt guard assignment mentioned above). Peterson replied that DeJong was "anticompany" and that "the company was not going to do [DeJong] any favors."[57]

On March 22, another "special performance report" was inserted into DeJong's personal file without DeJong's knowledge (crediting DeJong's undisputed account and noting that the space on the report calling for an employee's signature is blank).[58] This record, signed by a visiting foreman from California, Berry, states in pertinent part that DeJong was "warned about not wearing earplugs in the plant," and "Any further incident of this will result in a 3-day suspension without pay and then termination." DeJong states that he had worn earplugs from the time that they had been issued approximately a month earlier and throughout his employment thereafter. He further states that no one made an issue out of wearing plugs, nor even distributed them generally to all employees until just after the March 20 OSHA hearing. He admits that, on or about March 22, he was stopped at work by both Berry and Pacheco and that Berry told DeJong that "he had been seen in the plant without hearing protection," without specifying when or where. Referring to Pacheco's presence, DeJong asked Berry if Berry "needed a witness along to give phony warnings." Berry replied negatively and the incident ended. In the absence of any contrary testimony by either Berry or Pacheco (neither of whom testified), I credit DeJong that he had, in fact, worn earplugs at and around the time that he had the conversation with Berry and Pacheco."

On March 23, Peterson wrote yet another "Special Performance Report" on DeJong,[59] this one citing DeJong's alleged failure to make satisfactory repairs on assignments which he had received on March 7, 19, 20, 21, and 22 "to comply with OSHA requirements." That report further asserted that DeJong's "quality of work is not up to required standards for maintenance machinist," and warned, "Failure to improve performance will result in disqualification." This report was given to DeJong by Peterson in the presence of Plant Superintendent Kiker. DeJong commented that he intended to take a copy of it to the next OSHA hearing (apparently to undermine the claim made by Respondent's attorney at the March 20 hearing that Respondent did not issue "write-ups" for OSHA-related work infractions by employees and/or to show that Respondent was now issuing writeups punitively because DeJong had been responsible for bringing the underlying violations to OSHA's attention). DeJong also refused to sign the report, prompting Peterson to go to Plant Manager Lester who instructed that DeJong would have to "leave the plant" if he refused to sign the report. Upon learning of this ultimatum from Peterson, DeJong signed the report with the notation, "Under Duress."

Peterson gave summary testimony about his complaints regarding DeJong's failure to carry out the designated repair assignments on the dates specified in the report. DeJong testified that he had made conscientious efforts in each case, but had been unable to complete each job either because of lack of clear directions or proper equipment, and/or because three of the four complained-of repairs had fallen in the period March 19–20 when he had worked only half-shifts and had been required to drive 600 miles round trip overnight to attend the OSHA hearings. DeJong also explained that, during the period in question, he received conflicting assign-

[55] Credited and uncontradicted testimony of DeJong. Respondent's California based regional manager, Frank Franklin, was present at the OSHA hearing. He was also present in Worland throughout the 2 separate weeks in which the instant hearing was held, making frequent visits to the courtroom. Franklin was never called to testify.

[56] At the hearing, Peterson testified that, when Steiner returned, Peterson had plans to make him a leadman and, although the relationship to that plan is not clear, this is one factor that warranted putting Steiner on the first shift. Peterson also claimed that he wanted to keep DeJong separated from day-shift employees Bryce and Lee because of the hard feelings between them.

[57] Credited testimony of DeJong. Peterson did not deny this in any of his testimony.

[58] Resp. Exh. 2(e).

[59] Resp. Exh. 2(g).

ments from Christensen which made it difficult to devote extended time to the "running list" of OSHA-related repairs which Peterson would leave with Christensen for DeJong to accomplish.

Most probative of all, however, is DeJong's uncontradicted and therefore credited testimony that he went to Christensen after he received the March 23 report and pointed out that "at least three of the dates [were] on nights where [DeJong] was required to work at night on the production line running machinery." According to DeJong, and undenied by Christensen, Christensen then told DeJong that he "would take the write-up to the front office and see if he could get it thrown out." Christensen later told DeJong that he had pursued the matter with the front office, but "got no satisfaction." Not only did Christensen fail to deny this testimony by DeJong, but he also elsewhere admitted, "Marion done a good job for me," when asked to evaluate DeJong's work.

This spate of disciplinary memoranda then abated for approximately 1 month. Curiously, in early April, Plant Manager Lester and then newly installed Personnel Director Taylor sought to persuade DeJong to take a supervisory position. According to DeJong, substantially corroborated by Lester, Lester called DeJong to his office on April 10 and told DeJong that he (Lester) had his "eye on" DeJong and stated that he thought DeJong "could do better in management." Lester offered DeJong a line supervisor's job. DeJong refused. Lester then stated that Peterson would be quitting soon and that DeJong would be considered for Peterson's job as master mechanic. DeJong refused. Thirty minutes later, Taylor called DeJong to his office and again sought to convince DeJong to take a line supervisor's job. DeJong again refused.

Testifying on this subject, Lester stated first that he wanted only "good caliber" persons as part of his "management" group. He states that he reviewed DeJong's personnel file "in the latter part of March" and, being impressed with DeJong's prior "management" experience, asked him to become a "member of management" as a line supervisor (i.e., that group of supervisors over the D&I lines which Respondent has nominally denied were supervisors within the meaning of the Act in both the representation case and the instant case). Lester further testified that he did not offer DeJong the supervisory job until after first consulting with, and obtaining the approval of, California-based Regional Manager Frank Franklin.

Lester testified on this subject under adverse examination at the beginning of the hearing in connection with offering his reasons for eventually discharging DeJong in late August. Forced to admit that he had earlier regarded DeJong as "management" material, he then gave the impression of straining to explain that no basis for doubt about DeJong's abilities or attitude had developed until sometime after he had made the supervisory job offer. Thus, Lester stated that DeJong "at first was a good and cooperative employee [but] . . . at a later date seemed to become obstinant [sic] and no disregard [sic] for management, and he seemed to have a total disregard for our operation as a whole." He further testified that he noticed DeJong change for the worse "probably the first or the middle part of May." This suggests either: (a) Lester disregarded as insignificant the extraordinary series of adverse memoranda which had been placed in DeJong's file by "the latter part of March"; or (b) those memoranda did not exist as of "the latter part of March" and were fabricated and inserted at some later date; or (c) Lester (and Franklin) had ulterior motives for seeking to promote DeJong out of the bargaining unit shortly before he was to stand for reelection as the Union's local president in late April. None of these possibilities reflects favorably on Lester's candor as a witness, nor on the fairness, objectivity, or regularity of DeJong's treatment at the hands of Respondent's management agents.

Further indicative of Respondent's hostility towards DeJong's leadership role in the Union and its fear of his winning the April 27 election is a conversation between Personnel Manager/Superintendent Taylor and employee Roger Geer roughly a month before the April 27 election. Crediting Geer's undenied testimony, Taylor approached Geer and asked him who he thought would win the presidency of the Local, adding: "For everybody's sake, you'd better hope it's not Marion."

DeJong's next brush with management occurred shortly after he had, on the night of April 25, prepared and left in the employee lunchroom copies of leaflets[60] promoting his own candidacy for reelection to a full term as president of the Worland Local.

The contents of the leaflet are relevant to a variety of issues and are therefore set forth in full as follows:

> From: Marion DeJong
> PRESIDENT, LOCAL #8810
>
> Fellow U. S. W. A. members, I would like to set the facts straight before the election on April 27th:
>
> On November 17, 1978, the election for union representation was held. The U.S. W. A. won with 47 of the 58 votes cast.
>
> In early December, we held elections for union officers. My opponent in that election was so anxious to serve the union that he didn't even come in to vote.
>
> Shortly after the election I requested an O. S. H. A. inspection. At that time, between 10 and 15% of our work force were being injured *every month*!
>
> On January 4, 1979, the O. S. H. A. inspectors arrived. I went on the inspection tour with them. The company was issued 47 citations, most of them for serious violations.
>
> On January 6, 1979, a company stooge threatened my life at the plant in front of witnesses. Instead of giving this man disciplinary action, the company gave him and two others the day off with pay to circulate a petition to have me removed from office.
>
> At the same time the company was running a health insurance program that didn't pay any claims. I took a tape recorder upstairs and questioned the personnel director and the plant manager about our insurance program. After hearing what was on the tape, the Wyoming State Insurance

[60] G.C. Exh. 8 is a specimen copy.

Commissioner got in contact with the company. Only then did the company start paying medical claims. At that time I was put on night shift for the duration.

Soon afterward the company appealed the O. S. H. A. charges and requested another company stooge to represent the employees at the O. S. H. A. hearing. However, O. S. H. A. stated that I was the legal representative at this hearing. Two days later this second company stooge threatened to break my arms with an iron pipe, in the plant, again with witnesses. Also, again, the company refused to take any disciplinary action.

On March 20, 1979, I went to the O. S. H. A. hearing in Cheyenne. At the hearing the company denied that there were any safety hazards, and I refused their claims. The company lost. Two days later the company wrote me up, claiming that it was my fault that the safety hazards had not been repaired.

On April 10, 1979, the plant manager offered me a supervisors job; I refused. He then offered me the Master Mechanic's position; I refused. I will not walk away from my obligations to our union.

So, please, before you cast your votes on Friday, ask the people you are voting for what they have done for our union!

Thank you,
s/Marion DeJong

On the morning of April 26, Lester arrived at his office and was met by Lloyd Bruce who was "boisterous" and "upset," according to Lester, about the evident reference in DeJong's campaign leaflet to Bryce as being one of the two "company stooges." Bryce gave Lester a copy of the leaflet and returned to his work station.

Either shortly before or shortly after complaining to Lester, Bryce confronted Kathy Kasselder, Gerald Kasselder's wife, in the employee lunchroom.[61] The only witness to the confrontation who testified, Mike Eaves, whom I credit, stated that Bryce said to Kathy that DeJong's leaflet "is a bunch of f—— lies." Kathy defended the leaflet. Bryce replied to Kathy: "You don't know a f—— thing about it.," prompting Eaves to tell Bryce to shut his mouth.

On the evening of April 26, DeJong left the plant at the start of his scheduled dinner break, telling his supervisor, Christensen, that he might overstay his break because he wished to visit the election site. Christensen told DeJong that, if he returned late, Christensen would have to "write him up" for it. DeJong agreed that this would be fair under the circumstances. DeJong returned from the break 45 minutes late. Christensen issued the promised "write-up"[62] which DeJong signed without protest.

About 5–6 minutes before the end of the second shift on April 26, Gerald Kasselder was walking towards the washroom to wash up and leave the plant. He passed Bryce working on a low platform. Kasselder had by then heard about Bryce's exchange with Kasselder's wife that morning. Crediting the uncontradicted testimony of Kasselder about what next happened: Kasselder called to Bryce, then stepped up on the platform and told Bryce: "The next time you want to talk . . . dirty to somebody, make sure it's me and not my wife." Bryce replied: "F— you . . . Jerry," grabbed Kasselder and pushed him off the platform, then joined him on the floor, saying: "We will settle this outside, you f——." Kasselder had grasped an iron bar while being pushed off the platform but dropped it as DeJong approached from the rear and separated Kasselder from Bryce. DeJong urged Kasselder to leave the area with him and "get cleaned up and get out of here."[63] DeJong and Kasselder walked together to the machine shop to retrieve their coats and began walking out of the plant. They were stopped by Supervisor Ken Maher, who shouted at Kasselder: "Get your ass back here, m—— f——." Maher then grabbed Kasselder, saying words to the effect that the two were going "outside to settle this right now" and telling Kasselder that no one could talk to his "people" the way Kasselder had to Bryce. Maher began emphasizing his remonstrations with Kasselder by jabbing his finger near Kasselder's face and Kasselder batted Maher's hand away. DeJong located a supervisor, Larry Hartnick, and DeJong and Hartnick separated Maher and Kasselder.[64]

The next day, Kasselder found his timecard missing from the rack and was called by Personnel Manager Taylor to a meeting in Lester's office, also attended by David Murdock of Peddal, Inc. Lester asked for Kasselder's account of his *contretemps* with Bryce, saying that the management agents would be taking notes. Kasselder recounted the previous evening's events as set forth above. Lester then told Kasselder that he had been "insubordinate" in the past, without providing details. Kasselder argued the point. Lester then told Kasselder that he was "suspended" and ordered him to clear his personal gear from the plant. On April 30, Kasselder received a mailgram from Respondent notifying him that he had been discharged.

Bryce was also "suspended" for 3 days, but was reinstated and was reimbursed later for pay lost during his suspension. Lester admitted that Bryce's personnel file contains no mention of the altercation, nor any mention of DeJong's earlier complaint to Cordova regarding Bryce's threats to "bury" DeJong and put him in a "pine box."

On the morning of Saturday, April 28, Personnel Manager Taylor called DeJong at home and told him that he was being suspended without pay for 3 days. DeJong asked why. Taylor replied that DeJong had been written up "three times for being late from lunch." DeJong disputed this, saying that he had only received one such

[61] Gerald Kasselder by this time was running for the office of vice president on an informal "slate" with DeJong. Kathy Kasselder was running for the office of recording secretary.

[62] Resp. Exh. 2(j), including the phrase: "He took 45 minutes to [sic] long due to union election."

[63] DeJong corroborates Kasselder as to what happened after Kasselder mounted the platform (the first point at which DeJong noticed the confrontation). Before stepping into the fray, DeJong told another employee to call a supervisor.

[64] This account is not only corroborated by DeJong, but also by employee witnesses O'Donahue and Tibbs. No supervisors testified about the incident.

writeup. Taylor replied that he would have to review his records. DeJong said that Taylor could "look all the way to China" for them but would not be able to locate three such writeups. The conversation ended after Taylor reiterated that DeJong was being suspended and DeJong replied, "Fine, I need the time off."

Taylor's explanations for his action in this regard are confined to his responses during adverse examination at the start of the hearing (he never testified after that). Taylor testified that he had suspended DeJong because DeJong had received a warning for taking a late break on one day, "and the very next day he done it again . . . ." but there is no evidence that such was the case. Instead, there are two memoranda in DeJong's personnel file dated April 26 and 27, both signed by Christensen.[65]

The April 26 "Special Performance Report" states:

> On the night of the 26th April 1979 I gave a verbal warning, he took to [sic] long of a break.

The April 26 memorandum was not signed by DeJong. He testified that he had never seen it before the hearing.

The April 27 memorandum is the one already referred to which DeJong had received as a result of overstaying his dinner break on April 26 in order to visit the election site. Christensen never testified that DeJong overstayed his break two nights in a row. Indeed, Respondent's counsel pointedly refrained from asking Christensen anything about the April 26 memorandum, even while dwelling at length on the other memoranda Christensen issued during the same period. I can only conclude that the April 26 memorandum was prepared at some point reflecting that DeJong (as he admitted) had been warned by Christensen that, if he overstayed his break on April 26, he would be "written up" and that the April 26 memorandum was intended to reflect this warning and not some separate warning about yet another break which DeJong had overstayed. Thus, the April 26 and 27 memoranda relate to the same incident of DeJong's overstaying his break on April 26, rather than showing that DeJong committed two "break" infractions on 2 consecutive days.

Taylor further testified that, before he had decided to suspend DeJong, he had found a message on the morning of April 26 from Christensen enclosing a copy of the campaign leaflet which DeJong testified he had left in the lunchroom on the night of April 25. Christensen had also separately prepared a "Special Performance Report" dated April 26[66] and completed later that morning or afternoon, but referring to an incident on the night of April 25 wherein DeJong had allegedly handed a copy of the campaign leaflet to Christensen as he passed Christensen's work area. Christensen acknowledged that he had never spoken to DeJong about the matter.[67] During this stage of his testimony Christensen demonstrated extreme unease when pressed by the General Counsel and counsel for the Charging Party regarding why he had prepared the report and whether or not he had been prompted to do so by higher management. Apart from his demeanor, this is further reflected in Christensen's repeated use of "I don't recall" and similar formulations when asked such questions as "Did anybody suggest that you write this report up?"[68] Christensen vaguely acknowledged, however, that he memorialized the incident due to what he characterized as some general instruction from Lester, although he avoided saying that such an instruction was made on April 26.

I infer from all the foregoing, and therefore find, that Christensen, knowing of higher management's interest in DeJong's union activities, first left a copy of DeJong's leaflet for Taylor to find on the morning of April 26, and then later prepared a memo falsely reporting that DeJong had given him a copy of the leaflet on the plant floor.

When DeJong returned to the plant on May 2 after serving out his 3-day suspension, he was first taken to Lester's office by Taylor. DeJong sought to have the Union's then vice president, Rich Brazelton, attend the meeting as a "witness." Brazelton was not permitted to stay. After Brazelton left, Lester told DeJong[69] that it was "unfortunate" that Kasselder had been terminated ". . . as a result of the letter that [DeJong] had put out on the floor." There was then some discussion about the letter. DeJong states that Lester or Taylor asked him if he had authored the letter and that he replied that he "would not discuss the letter." Taylor and Lester insist that DeJong affirmatively denied authorship. I find that neither account is literally true. Considering all of the circumstances, it is likely, and I find, that some effort was made by Lester and Taylor to discuss the letter (including an attempt to have DeJong admit that he was its author) and that DeJong was reluctant to discuss any aspect of his union activities and was therefore evasive without ever affirmatively admitting or denying authorship. DeJong's behavior nevertheless caused Lester and Taylor to conclude that DeJong was refusing to admit even having authored the letter. Lester then warned DeJong that he would be fired if he were found to be responsible for any further "disruptions on any shift."

DeJong returned to his work station, but was later called to Taylor's office where Taylor issued him a written reprimand[70] which stated in pertinent part:

> You are given this official reprimand for violation of plant rules. The letter you put out on April 26, 1979 is in direct violation. Any further action of this nature on your part will lead to your immediate dismissal.

DeJong asked what rule had been violated and Taylor replied that it was the rule concerning "solicitation" (i.e., the rule heretofore found to have been discriminatorily

[65] Resp. Exhs. 2(h) and (j), respectively.

[66] Resp. Exh. 2(i).

[67] DeJong flatly denied handing a copy of the leaflet to Christensen, saying that he only told Christensen (who had been involved with the Union before becoming a supervisor) that there was some "interesting reading" in the lunchroom. I credit DeJong, due to Christensen's evasive and uncomfortable behavior during his testimony in this area (see below).

[68] And see, generally, his testimony at that point.

[69] The following is a synthesis of DeJong's and Lester's harmonious, but not identical, accounts of the meeting.

[70] Resp. Exh. 2(m).

promulgated in August 1978 and which was, in any case, unlawfully overbroad and violative of Sec. 8(a)(1)). DeJong signed the reprimand, writing also: "I consider this statement to be a total fabrication."

Within 2 weeks thereafter, additional memoranda were placed in DeJong's personnel file. On May 9, Lester mailed specimens of DeJong's handwriting, together with a copy of DeJong's signed campaign leaflet, to a professional "Questioned Document Examiner" in Denver, Colorado, seeking proof that it was, in fact, DeJong's signature on the leaflet.[71]

On May 14, Peterson wrote a lengthy "Special Performance Report"[72] on DeJong, stating that, between May 10 and 11, DeJong had failed to install three "bug lights" in locations which had been clearly designated by his supervisors, and noting that appropriate fasteners had been provided to him after he had first stated that he did not have the proper fasteners. The memorandum added:

> This employee is repeatedly leaving assigned jobs undone with excuses that work is in his opinion unnecessary or not being done the way he feels it should be done. Marion was assigned to place tags on plant equipment on three separate days . . . this job is still incomplete on equipment that is readily available. This employee, after repeated warning, still fails to carry out job assignments and disregards instructions from supervisors. His performance is unsatisfactory and his attitude is disrupting the performance of other employees in this department and other departments within the plant.

On May 14, DeJong was taken to Peterson's office where he met with Peterson and Taylor. He asked to have a "witness." The request was denied. He was given a copy of the foregoing report and was informed by Taylor that he was being demoted to a lower position because he was not performing up to machinist's standards. DeJong observed: "Boy, you guys do good work. . . ." DeJong then argued that, even with his demotion, the Union's master contract conferred wages at least as high as he was until then receiving as a machinist. Peterson reported in a formal "Request for Status Change" memorandum[73] dated May 15, referring to the meeting on April 19, that DeJong had argued that "union scale is $9.34 per hour," thereby prompting Peterson to reply, as he states in the same memorandum: "that we had no union in this plant at this time."[74] Peterson further commented in that May 15 memorandum that, after Peterson had stated that there was "no union" at the plant, DeJong "laughed and walked out the door," prompting Peterson to make the closing observation: "He seems to have a total disregard for supervision and management."

Testifying in support of the May 14 report, Peterson confined himself only to the "bug light" and identification tag incidents. As to the merits of those allegations, the evidence is conflicting. DeJong states, in substance, regarding the bug lights, that he had a standing assignment to install them and that Peterson had placed a blueprint diagram on his office window showing the locations where they were to be placed. DeJong states he repeatedly asked Peterson over a 3-month period to supply him with proper fasteners. On May 11, states DeJong, Peterson finally furnished the fasteners and DeJong installed two of the three lights in locations where Peterson had earlier instructed him to put them, but admittedly not in the locations designated in written instructions he received on or about May 11. DeJong explains that he simply followed earlier instructions, believing the written instructions were in conflict with what Peterson had told him earlier.[75] After telling Peterson that he would need a masonry drill to install the third light, Peterson located a suitable tool, which DeJong used. In the process, DeJong suffered an eye injury from a masonry fragment, requiring DeJong to leave the plant (with Supervisor Christensen's permission) to receive medical treatment. A physician removed the fragment from his eye and covered the injured eye with a patch. DeJong returned to work but, being able to see out of only one eye, was sent home for the remainder of the shift without having completed the installation. On the following day, May 12, DeJong states that he was assigned to operate a punch press all day due to the absence of the regular operator, and was unable to complete the installation that day.

Regarding the equipment tags, DeJong states that he had a standing assignment to rivet brass tags to equipment, that he received a limited supply of rivets from Peterson, that he used up that supply, requested more rivets from Peterson, and then, upon receiving more rivets, tagged as much equipment as was available (some of it being locked up during DeJong's night shift). DeJong states further that Peterson told him regarding the remaining untagged materials, "Don't worry about them. We'll have the day shift people take care of them when they come in on Sunday."

Peterson did not specifically deny the details of DeJong's explanations, and his testimony was essentially confined to generalizations of the same type as those contained in his May 14 report. Respondent offered no further corroboration of Peterson in the form of testimony by Christensen or other supervisors. In addition, no testimony was introduced whatsoever to support Peterson's assertion in the May 14 report that DeJong's "attitude" was "disrupting the performance of other employees in this department and other departments within the plant."[76]

[71] Resp. Exh. 2(o). On May 22, the expert mailed back a written opinion (Resp. Exh. 2(p)) confirming that the exemplars matched the signature on the leaflet.

[72] Resp. Exh. 2(q), a typed memorandum, in contrast to Peterson's earlier practice of handwriting such reports.

[73] Resp. Exh. 2(r) is a typed, and supplemented, version of the original "status change" memo which was handwritten. The original memo, given to DeJong on May 15, is in evidence as G.C. Exh. 25.

[74] As noted earlier, the Regional Director for Region 27 had, on May 10, overruled Respondent's objections to the Union's election victory and had issued a formal certification. At this point, Respondent was in the process of requesting review by the Board of that regional decision.

[75] The written instructions were apparently given to DeJong by Christensen, although the record is unclear on this point.

[76] As noted above, Christensen testified that "Marion done a good job for me," further stating that DeJong had never been "abusive" to him

Continued

Finally, there is the following uncontradicted testimony by DeJong about a further meeting between himself and Personnel Manager Taylor on May 15: DeJong was called into Taylor's office. DeJong brought employee Bill Tibbs as a "witness" and requested that he be permitted to stay in that capacity. Taylor refused this request, but also then asked two supervisors, Pacheco and Hood, to leave the office as Tibbs left. When they were alone, Taylor gave DeJong a copy of the May 15 "status change" memorandum.[77] There was a brief dispute over whether the demotion was to a "24-month mechanic" rate or to the rate paid to "mechanic-trainee."[78] There was then the following exchange, as reported by DeJong:[79] Taylor told DeJong that if his "attitude" did not change, he would be fired. DeJong replied that if the "attitude" Taylor was referring to was DeJong's "trying to help the employees in the plant," then Taylor "might as well fire [DeJong] because [DeJong] was going to continue to help them. "Taylor then told DeJong that, if DeJong stayed at the plant, Taylor would "make life hell" for DeJong. DeJong asked Taylor what he thought he had been doing "for the previous six months." Taylor stated that he had not been there for the entire 6 months. The conversation ended. Taylor was never called by Respondent to deny this testimony. I therefore find it to be true.

It is not clear why DeJong's alleged failure fully to perform the bug light installations and the riveting of brass identification tags according to orders amounted to, in Peterson's words, a failure to perform up to "machinist's standards." It is clear that DeJong's demotion to the "trainee" level was humiliating and represented a substantial loss in wages. DeJong credibly testified without contradiction that, notwithstanding the demotion in title and pay rate, he continued to receive "machinist-level" assignments, including emergency repairs on equipment throughout the plant—the only exception being the operation of machining equipment in the machine shop.

At some point in June, as DeJong testified without contradiction, he and his partner Rita Nicholl spoke with Personnel Manager Taylor, asking what was required to qualify for the higher, "24-month mechanic" rate. Taylor replied that "all that was required was that your lead man and your supervisor agree that you were qualified to be a 24-month rate mechanic and so notify Bob Taylor." DeJong then asked Bob Moon, his leadman, and Christensen, his supervisor, to try to obtain a wage increase for him to the "24-month mechanic" rate. Christensen admittedly approached Taylor on the subject with a recommendation that DeJong receive such an increase. According to Christensen, Taylor rebuffed the request, saying "at that time . . . they wasn't passing any raises out . . . something to that effect . . . ."[80]

On or about July 4, DeJong, frustrated over his demotion and the fact that Respondent was paying him at the "mechanic-trainee" rate while continuing to call upon him to perform skilled maintenance and repair work, took all of his own machinist tools home, leaving in the plant only a hammer, a pliers, and a screwdriver.[81]

On or about July 5, Frank Franklin, Respondent's California-based regional manager, who was in Worland for some unstated purpose, stopped DeJong as DeJong was coming off the end of his 12-hour night shift at 7 a.m. and told DeJong that he would be fired if he did not bring his required set of tools back to the plant by the next shift.[82] Franklin then followed DeJong out into the plant parking area to DeJong's car and told DeJong that DeJong was "a dirty son of a bitch" and that "he was going to fire [DeJong] if it was the last thing he ever did."[83] DeJong complied with Franklin's ultimatum and brought his full set of tools back to the plant.

Between that last incident and the incident ultimately relied upon by Respondent to discharge DeJong, additional memoranda were placed in DeJong's file without his knowlege. On July 12, D&I Supervisor Leo Kiker recorded[84] that DeJong and a fellow employee on the ironer line, Rita Nicholl, were observed talking to one another when the line was not running. Kiker noted that he instructed DeJong, "in the presence of Roger Lewis" (a supervisory witness) that he should clean up the surrounding area when the line was down. The memo fails to reflect what, if anything, Kiker said to Rita Nicholl on the subject. Kiker was never called to testify. The inference is irresistible that Kiker's reference to instructing "Marion" on the matter means that his remonstrations were limited to DeJong.[85]

On August 16, DeJong's new supervisor, Dale Anderson, recorded in a handwritten memorandum[86] that he had seen DeJong "sitting down on the job," that Anderson had "talked to him about it," suggesting that DeJong

and admitting that DeJong got "along with other people on the shift." Leadman Moon testified even more favorably, describing DeJong's work as "excellent" and "above average" compared to other employees over whom Moon served as leadman. He further acknowledged that DeJong "got along" with other employees on the shift, adding that the only "problem" that he observed was that "Lloyd [Bryce] was giving him a hassle."

[77] That is, the original, handwritten one (G.C. Exh. 25).

[78] The "status change" memo refers to a demotion to "D&I mechanic trainee," and further reflects that this would result in a reduction in pay from DeJong's prior rate of $7.35 per hour to $6.31 per hour.

[79] Synthesizing DeJong's undenied testimony at two different stages of the hearing regarding the same event.

[80] DeJong quotes Christensen (and Moon) as telling him that Moon and Christensen "tried three times to have me promoted to the 24-month rate, the last time in writing, and that every time Mr. Taylor refused to act upon it." While Moon was not shown to be (and apparently was not) a supervisory agent of Respondent, Christensen was. Accordingly, I treat his undenied statement to DeJong in this regard as an admission by Respondent's agent that, in fact, Christensen made three separate efforts to obtain a pay raise for DeJong to the 24-month rate, including one written recommendation, and that Taylor repeatedly refused this recommendation.

[81] Machinists were required by Respondent to furnish their own sets of tools.

[82] And see Taylor's memorandum entered in DeJong's personnel file (Resp. Exh. 2(s)) reflecting the same incident.

[83] Credited and undenied testimony of DeJong.

[84] Resp. Exh. 2(t).

[85] DeJong's testimony supports this inference. He recalled Kiker first coming over to him and Nicholl on the line, informing them that the line was "going to be down for a while" and asking them to "please police the area." Ten minutes later, according to DeJong's undisputed testimony, Kiker came over to DeJong while DeJong was picking up cans pursuant to the earlier instruction and called *only* DeJong into Kiker's office along with supervisory witness Roger Lewis and then "repeated verbatim what he had told Rita and I 10 minutes before. . . ." DeJong never saw the memo Kiker later prepared about the incident.

[86] Resp. Exh. 2(u).

use idle time (the line apparently being down) to "generally clean up around his area." Anderson then noted: "He did as he was told with no trouble." The memo went on to report that DeJong later spent "15 to 20 minutes in the restroom," that Anderson told DeJong that this was "too much time" and that DeJong said "OK" and that "he wouldn't do it any more."

Anderson did not provide any testimonial details about the matters underlying his preparation of the August 16 memo. He simply replied affirmatively to Respondent's attorney's question: "Are all of the assertions in that document correct?" More significantly, Anderson did not deny the specific testimony of DeJong as follows regarding events on August 16: Anderson told DeJong on August 16 that Anderson had been "receiving phone calls from Taylor and Peterson all day . . . and that they wanted him to chew [DeJong] out."[87] Anderson further told DeJong that the supervisor from California had just reported to Anderson that DeJong had just spent 15 minutes in the bathroom.[88] Anderson told DeJong that he knew that DeJong "wasn't that bad," that he "didn't know what was going on . . . [or] what to do about it." DeJong told Christensen "not to worry about it, that they had done the same thing to John Christensen, that they were putting pressure on [Anderson] to put pressure on [DeJong] . . . ." Anderson then warned DeJong to "look out." DeJong never saw the memo which Anderson subsequently wrote on the above matter.

Kiker wrote another "secret" memo for inclusion in DeJong's personnel file claiming, on August 23, to have observed DeJong standing "with his back to the ironer line" at three different times "without making any effort to clean up the area." Since Kiker did not testify, there is little reason to rely on its contents, or to infer that the lines were not operating. DeJong testified, however, that the normal position for operating the ironer is to stand with one's back to the line in order to observe control panels which will promptly reveal a malfunction before it can be detected audibly or visually, thereby permitting the operator to stop the line before a malfunction causes the line to jam and cans to back up and spill out onto the floor. I so find, in the absence of contrary evidence. In addition, there is reason to conclude that Kiker did not see fit to write that memo until some date after August 23. DeJong's last day of work was August 23. He was fired the next morning for allegedly having falsely reported that he was leaving work early on August 23 to keep an appointment with a physician. Not only does Kiker's memo fail to indicate the date on which it was prepared, but the memo itself also begins: "On 8-23-79 Marion DeJong was observed . . ." suggesting thereby that the memo was prepared at a later date. I infer that the memo was prepared after DeJong's discharge in an effort further to "paper" DeJong's file with adverse material which could be used to defend against charges that DeJong was unlawfully discharged.

The circumstances surrounding DeJong's discharge deserve detailed findings. It is undisputed that the Union had scheduled two meetings on August 23—one to take place at 4 p.m. and the other at 6 p.m., all pursuant to a by-then established pattern. Notices of such meetings were left in the employee lunchroom. Respondent's agents admittedly were aware that such meetings had been scheduled. DeJong had recently been reassigned to the day shift. He received a telephone call from his wife over the noon lunch hour on August 23, informing him that the Union's representatives would be unable to attend the 4 p.m. meeting.[89] DeJong then decided that it would be important for him to attend the 4 p.m. meeting. He states that he approached his supervisor, Dale Anderson, at or about 1 p.m. to request permission to leave work early at 4 p.m. DeJong reports that Anderson granted the request, adding that DeJong should "be sure to bring a doctor's excuse." DeJong then told Anderson: "No, Dale, I'm not going to see a doctor. It's business," and Anderson replied: "OK."

When DeJong appeared for work on the morning of August 24, he was met by Anderson in the parking lot. He told Anderson that he had heard a rumor at the second of the two union meetings that he was about to be fired for failing to bring in a doctor's excuse for his absence of the previous day. He then reminded Anderson that he had made it clear when he had requested permission to leave early on August 23 that he was not going to a doctor. He reports that Anderson replied that there was so much noise on the ironer line that Anderson had not heard the latter comments from DeJong. DeJong then asked Anderson if he were going to be fired and Anderson replied that he did not know.

DeJong then entered the plant and was called to Taylor's office. Crediting DeJong's uncontradicted account here, DeJong asked that an employee named Jack O'Donahue be permitted to attend "as a witness" and Taylor refused the request, dismissing O'Donahue from the room. Plant Manager Lester was in the room and remained. Taylor then immediately told DeJong that he was fired for leaving work under false pretenses and failing to bring in a medical excuse. DeJong was then escorted into the plant to retrieve personal belongings and was then led out of the plant.

Anderson's account is substantially different as to the background. He states that, at *10 a.m.* on August 23, DeJong approached him to request permission to leave work at 4 p.m. to keep a doctor's appointment and that he granted DeJong's request, adding the admonition that DeJong return with a doctor's excuse. Anderson reports that DeJong agreed to do so. For reasons never clearly explained to my satisfaction, Anderson went to the personnel office about 4:30 and met Supervisor Kiker.[90]

[87] DeJong testified that he had noticed Taylor, Peterson, and an unidentified supervisor from California watching him for extended periods of time on August 16, and prior to receiving Anderson's warning.

[88] When he testified in the instant proceeding, DeJong denied having spent 15 minutes in the restroom on August 6. Absent credible evidence to the contrary (and Christensen's casual "adoption" of the contents of his memo mentioned above does not amount to such credible evidence), I credit DeJong on this point.

[89] Credited testimony of DeJong, circumstantially corroborated by Mike Eaves, who testified that he took a call from DeJong's wife over the lunch hour on August 23 and called DeJong to the telephone.

[90] At one point, Anderson testified that he just "happened" to be there. Later, he recalled that he had made a special point to deliver the absence report on DeJong to the office before it closed at 5 p.m., even

Continued

Kiker asked Anderson why DeJong had left the plant early. Anderson claims that he reported to Kiker that DeJong had left for a medical appointment, prompting Kiker to comment that DeJong was, in fact, probably going to the union meeting.

Both DeJong and Anderson agree that the two met in the parking lot shortly before work on the morning of August 24 and that DeJong insisted that he had explained to Anderson on August 23 that he did not have a doctor's appointment.

In a memo signed by both Taylor and Anderson and prepared after DeJong's discharge[91] Taylor states, *inter alia*, that "It was subsequently learned that Marion DeJong did not leave work for a doctor's appointment. Therefore, Mr. DeJong's absence was a result of making false statements to the company under false pretenses, a dischargeable offense. This offense by itself warrants discharge. However, Mr. DeJong has also on numerous prior occasions committed offenses against the company and these have also been considered."

I credit DeJong's version of his original request to leave work early on August 23. Anderson's testimony that DeJong made the request in the morning does not square with DeJong's corroborated testimony that he did not have any reason to leave work early until receiving the telephone call from his wife during the lunch hour. It may be that Anderson assumed initially that DeJong was seeking time off for a medical appointment, just as DeJong's testimony would indicate. But I credit DeJong that he tried to correct that misapprehension by specifying that his appointment was for "business" reasons. From DeJong's credited account of his encounter with Anderson the next morning, it appears that Christensen was not as certain as he claimed at the hearing to be about DeJong's invocation of a medical excuse. Thus, Christensen admitted to DeJong, after DeJong reminded him of their full conversation on the previous day, that the noise on the ironer lines may have contributed to a misunderstanding. Thus, the more likely scenario is that Anderson, knowing of management's undisguised interest in DeJong's minute-by-minute behavior, went to the personnel office shortly after DeJong left the plant, learned from Kiker that DeJong was most likely at the scheduled union meeting, and so reported to Taylor. From there, management appears to have seized on Anderson's "misunderstanding" as a pretext for the discharge.

More fundamentally, it is simply unlikely that DeJong would have invented a false excuse for leaving work early when the true reason—a pressing union appointment—would have been sufficient to obtain the requested time off. Thus, as both Anderson and Lester conceded, there were sufficient employees at work on DeJong's line that day to permit DeJong to leave without disrupting production. Anderson and Lester further conceded that such "time off" requests to attend to any form of personal business were routinely granted—and had been so granted to other employees on DeJong's line during the week preceding DeJong's discharge. Lester even went so far as to say that, if DeJong had requested to leave work at 4 p.m. to go to a union meeting, the request would have been granted. Under such circumstances, it is difficult to believe that DeJong, sensitive to repeated management attempts to catch him in some act of misconduct, would have risked using a false excuse to obtain permission to be absent.

Lester, commenting on his reasons for instructing Taylor to fire DeJong, stated first that he had told Taylor that DeJong had been "observed" at the union meeting on the previous evening.[92] Explaining why he then "made up [his] mind" to fire DeJong, Lester stated, revealingly in my opinion:

> . . . that was my decision. And I just had enough of Marion claiming that on breaks he was taking—and in flaunting the union matter of—not that he would belong to a union but the fact that he had come back and knew he was late and shouldn't have been late. And he just seemed to be throwing everything in his [sic] face and using that office to do whatever he wanted to do.

The General Counsel introduced records subpenaed from Respondent's files reflecting the experiences of six employees who had been excused from work due to illness. Respondent joined in a stipulation that those employees' individual personnel files contained no physicians' excuses verifying the good-faith nature of the claimed illness. It was further stipulated that those employees were not disciplined in any way for having failed to submit medical excuses in connection with their absences.

Conclusions

The complaint specifically alleges that Respondent violated Section 8(a)(1), (3), and/or (4) of the Act by the

though his shift continued until 7 p.m. and he normally did not hand such absence report forms in to the personnel office until the end of his shift. He later testified inconsistently on the same matter that he "normally" turned in whatever reports he had accumulated by 5 p.m. to the personnel office. When asked what good it would do to turn in such piecemeal reports at the end of the office shift when office employees would be leaving anyway. Anderson again switched ground and stated that the report on DeJong was the "first one" that he had ever filled out and that he ". . . wanted to make sure this is what [he] was supposed to do." I find these conflicting explanations to be pure dissemblance, and clearly reflective of a desire to conceal his true motives in taking the seemingly extraordinary measure of leaving his work area and going to the personnel office to make yet another report on DeJong.

[91] Resp. Exh. 2(w).

[92] This report reached Lester's ears by the early morning of August 29 when he was discussing this fact with Taylor just before summoning DeJong into the office to inform him that he was discharged. This is one of many indications in the record that DeJong's activities were under the most intensive scrutiny by management. While other examples have been cited, one more telling indication of an all-out surveillance program on DeJong in the period before his discharge is a portion of another of the reports of Peddall, Inc., to Lederer in Philadelphia wherein it is noted that, on August 21, "our guard observed R. Sanchen verbally accausting [sic] DeJong in the parking lot. Although the guard was too far away to hear what was being said, it appeared to be a heated discussion, lasting 45 minutes." (G.C. Exh. 35(a).) The use of DeJong's surname alone in this report, in contrast to the more characteristic use of full names (or, at least, identifying initials) when other employees are mentioned, strongly suggests that DeJong had been the subject of many "security report" references. Only a small portion of those security reports were produced at hearing in response to the General Counsel's subpena directed towards evidence bearing on a different issue (Laird's discharge for alleged theft). The above reference to DeJong happens to appear on a report page dealing with other matters.

following treatment of DeJong in 1979: (a) putting him on the night shift in mid-January and refusing to reinstate him on the day shift thereafter; (b) reprimanding and imposing a 3-day suspension on DeJong on April 28 (the "multiple late-break" suspension); (c) reprimanding and threatening him with discharge on May 3 relating to his circulation of his campaign leaflet; (d) reprimanding and demoting DeJong on May 15 relating to his alleged failure to follow orders regarding installation of bug lights and equipment identification tags and his "disruptive attitude," and (e) the eventual discharge of DeJong on August 24 relating to his having allegedly used "false pretenses" to obtain permission to leave work early on August 23.

As is foreshadowed in the incidental commentary surrounding my making of findings, *supra*, I find merit to each of those allegations insofar as they allege that unlawful discrimination was visited on DeJong because he engaged in union and/or related protected concerted activities.[93]

It is concluded initially that DeJong's filing and pursuit of the OSHA charges were themselves concerted activities protected by Section 7 of the Act, even if they had not been linked closely, as they were here, to his union activities. Respondent does not argue to the contrary and the Board has clearly so held. *Alleluia Cushion Co., Inc.*, 221 NLRB 999, 1000 (1975); *Bighorn Beverage*, 236 NLRB 736, 752–753 (1978), and cases collected, enfd. in part and vacated in pertinent part 614 F.2d 1238 (9th Cir. 1980).[94] Even if the filing of OSHA charges were not *per se*, protected, however, I would be compelled herein to treat the OSHA charge filing as inseparably related to DeJong's leadership role in the Union. His OSHA filing activities were themselves perceived by Respondent as related to DeJong's conspicuous position of leadership in the Union as is evidenced by the remarks of Respondent's attorney at one of the OSHA hearings to the effect that DeJong's OSHA charges simply reflected an attempt "to get the Union into the plant." Where DeJong undertook the responsibility for filing OSHA charges after his election as the Union's Local president, where DeJong's OSHA activities were perceived by Respondent as being linked to his leadership role in the Union, where DeJong himself campaigned for reelection to the presidency of the Local in April 1979 based in part on his successful OSHA efforts, it would be impossible to conclude that Respondent's retaliation against DeJong commencing shortly after he filed the initial OSHA charges was not motivated primarily by its continuing determination to stifle effective activity by the Union's in-plant representatives while it concurrently sought to dissipate the Union's support by refusing to recognize and bargain with it as the certified representative.

Accordingly, as in *Bighorn, supra*, the differing views of and the Ninth Circuit as to the protected nature of OSHA filing activities, *per se*, are not of ultimate importance herein.

My review of the facts as found in the preceding section and in the record as a whole leads me to conclude that Respondent was extraordinarily determined to prevent the Union from gaining a foothold in the Worland plant. It may be simply that economic considerations—the cost of applying the Union's master contract to the Worland plant's labor force—was the source of Respondent's opposition to the Union's efforts to become certified as the representative of those employees. Whatever the specific motive for resisting the Union, however, it is clear that the Union's presence was anathema to Respondent's agents at the highest corporate level.[95] Respondent demonstrated its willingness to use blatantly unlawful efforts to defeat the Union by the preelection conspiracy to aid the Teamsters in violation of Section 8(a)(2) discussed earlier, and by the equally plainly unlawful imposition of a facially invalid no-solicitation rule shortly after the Union filed its election petition.

In the light of this virtually undenied background evidence showing Respondent's determination to foil the Union, it would be naive to assume that Respondent was not just as determined, after its failure to defeat the Union at the election stage, to take strong measures to prevent the Union from becoming entrenched at the Worland plant. Therefore, when DeJong, an articulate, experienced, and skilled journeyman worker emerged as the leader of the Union's in-plant forces after the certification election and promptly, through the protesting of an employee's discharge, the questioning of Plant Manager Cordova regarding insurance coverage for unit employees, and the filing of meritorious OSHA charges, showed himself to be a militant and highly visible representative of the Union, Respondent could be expected to be prepared to resort to whatever necessary and available means to neutralize him.

[93] I do not believe that the record supports the allegation that Respondent discriminated against DeJong in violation of Sec. 8(a)(4) of the Act because he filed charges and/or gave testimony under the Act. The General Counsel bases these alternative allegations solely on the timing of the commencement by the Union of an unfair labor practice charge-filing campaign against Respondent. It may be, as the General Counsel suggests, that Respondent would readily assume that DeJong was instrumental in feeding information to the Union on which at least some of the charges were based. But there is no basis for inferring that Respondent took discriminatory action against DeJong simply because of the initiation of unfair labor practice charges and independent of its more fundamental hostility towards DeJong shown to exist because of his key role in the Union's postelection efforts to maintain a viable "presence" at the plant while Respondent persisted in refusing to recognize it as the duly certified representative of the employees there.

[94] The United States Court of Appeals for the Ninth Circuit clearly rejects the Board's *Alleluia Cushion* rationale that filing of such work-related health and safety complaints is, *per se*, a form of constructively concerted activity protected by Sec. 7 of the Act. See also that circuit's opinion in *N.L.R.B.* v. *C & I Air Conditioning, Inc.*, 486 F.2d 977 (9th Cir. 1973), cited as "governing" in its recent *Bighorn* opinion, *supra*.

[95] In addition to other evidence set forth above, Respondent's grave concern about the Union's presence was unmistakably shown by Personnel Manager Taylor in a conversation with alleged discriminatee Roger Geer in July or early August 1979. Taylor had called Geer into his office to learn about the Union's current support as reflected in attendance at membership meetings. After Geer responded, Taylor informed Geer that Respondent's new corporate president would be visiting the Worland plant soon and Taylor urged Geer to pass the word among fellow employees that they should not "mention union" during the president's visit. Crediting Geer's undenied account, Taylor went on to say, "if they do mention union while he [Respondent's president] is here, he'll walk over and pull the switch on this place and everybody will be finding another job."

The facts as detailed in the preceding section establish that DeJong was singled out for extraordinary treatment due to his emergence as the in-plant leader of the Union and not because he engaged in unprotected misconduct. The principal evidence of such motivation is recapitulated below:

As soon as DeJong emerged as a candidate for election to the interim presidency of the Union's local, Respondent's corporate level agent, Lederer, made inquiries into his "background," seeking to determine whether he had been previously involved in union activities and/or had made any falsifications on his employment application filed substantially earlier. As soon as DeJong demonstrated himself to be an effective spokesman for employee interests by filing state OSHA charges, he was first given unprecedented plumbing assignments in the executive washroom and, soon after, he was moved to a less desirable night shift position and began to be the subject of exaggerated, if not wholly invented, written critiques about his working behavior, particularly his "attitude."[96]

The filing of OSHA charges was particularly threatening to Respondent. Plant Manager Lester told another would-be OSHA complainant, Tibbs, that he "would not put up with an agitator in his plant and . . . would fire them." In an apparent reference to DeJong's emerging role as a leader of the Union and to his OSHA filing activities, Peterson told DeJong that he would not be placed back on the day shift because he was "anti-company" and, therefore, "the company was not going to do [DeJong] any favors."

Only shortly after an ostensibly serious accumulation of adverse memoranda had begun to fatten DeJong's personnel file, Respondent's top local and regional management codetermined somehow that DeJong was "management material" and sought to promote him out of the bargaining unit. That this occurred so soon after the accumulation of adverse reports about DeJong's "attitude" and so soon before DeJong was to stand for reelection as the Union's local president virtually requires me to conclude that Respondent was determined, by punishment or reward—whichever might work—to prevent DeJong's continuation of his union presidency. Also worthy of note here is Taylor's statement to Geer shortly before the April 27, 1979, election of local officers of the Union that "For everybody's sake, you'd better hope it's not Marion" (who wins the election for local president).

If these conclusions were not alone sufficient to permit me to find the same antiunion taint in Respondent's subsequent treatment of DeJong, there is ample independent evidence from the circumstances surrounding that treatment. Shortly after Taylor learned that DeJong had introduced a hard-hitting union election campaign leaflet into the plant, Taylor seized on the fact that Christensen had made out two memoranda relating to a single late-break infraction by DeJong and determined without further investigation to impose a 3-day suspension on DeJong.[97] Immediately on the heels of that disciplinary action, Lester sought to further inhibit DeJong's union leadership efforts by threatening him with discharge should he ever again be "responsible" for causing "disruptions" in the plant.

It barely requires noting that this latter discipline, derived from an unlawfully broad and discriminatorily applied "no-solicitation" rule, constituted a blatantly unlawful interference with DeJong's right to distribute literature in nonwork areas pertaining to internal union activities; and the further warning that DeJong would be fired if his protected activity ever again resulted in "disruptions" compounded the violation. It is also significant in assessing Respondent's motivation in imposing the discipline that the employees and supervisors who engaged in the actually "disruptive" activities for which DeJong was held "responsible" were never themselves disciplined or counseled with (save only Kasselder, whose treatment is considered later herein). Bryce, whose abusive language towards Kasselder's wife must be regarded as at least contributory to the incident, and who was at least equally involved in an altercation related only remotely to DeJong's leaflet, remained totally free of any supervisory criticism. So far as his own personnel file is concerned, he was entirely innocent in the altercation which resulted in a discharge threat to DeJong. Respondent's supervisor, Maher, who sought to exacerbate the "disruption" (after DeJong had calmed the situation) by using foul and abusive language towards Kasselder and challenging him to go "outside" to "settle" the matter, was never questioned or disciplined, so far as this record shows.

Respondent does not argue that it had a right to discipline DeJong for bringing union campaign literature into the plant lunchroom. It relies on brief solely on the fact that Christensen reported (falsely, as I have found) that DeJong engaged in a single act of plant floor "distribution" of the leaflet and argues that this evidenced an "effort on DeJong's part to taunt the Company into taking disciplinary action against him." The latter argument is specious. The *ex post facto* "distribution" defense is contradicted by Respondent's own agent, Taylor, who issued the "solicitation" warning containing the discharge threat. Explaining why it was issued, Taylor stated (emphasis supplied):

> Because of the problems that the letter created. *Not for distributing the letter,* but for the problems that it created.

Therefore, even if I were to find that Respondent's higher management believed in good faith that DeJong had, in fact, engaged in a single passing act of distribution to a supervisor of a campaign leaflet, I would be

[96] It is noted here that adverse references to the "attitude" of an employee who has been shown to have engaged in conspicuous union or other activities directed towards the betterment of working conditions of fellow employees may be taken as reflective of employer hostility towards those protected activities. *Virginia Metalcrafters, Incorporated,* 158 NLRB 958, 962 (1966); *Winn-Dixie Greenville, Inc.,* 157 NLRB 657, 662 (1966); *Champion Papers, Inc. (Ohio Division)* v. *N.L.R.B.,* 393 F.2d 388, 395 (6th Cir. 1968). This was specifically shown to be the case when Peterson linked DeJong's "attitude" to DeJong's protected efforts to obtain the reinstatement of employee Hartley. See fn. 50, *supra.*

[97] And see G.C. Exhs. 29(a)–(l), reflecting far more gentle treatment of other employees for arguably comparable, or worse infractions (discussed further in connection with Weldon's discharge, *infra).*

hard-pressed to find that it was the isolated act of passing one leaflet on the floor—as opposed to in the lunchroom—which accounted for the disciplining of DeJong.

Respondent might argue, but it does not do so, that, in certain aggravated circumstances, a flat ban against "union talk," or union solicitation and distribution anywhere on company premises and regardless whether done on or off "working time," is permissible. Cf. *American Commercial Bank*, 226 NLRB 1130 (1973); *Nugent Service, Inc.*, 207 NLRB 158, 161 (1973). Those cases reflect that a prior history of disruptions and/or altercations resulting from otherwise protected in-plant activity by employees may privilege a flat ban on such activities on the employer's premises; and, where such a ban has been legitimately imposed based on that prior history, an employee may be disciplined lawfully for insubordinately refusing to abide by the ban. No authorities have been called to my attention, however, which would justify discipline against an employee for engaging in presumptively protected distribution of union materials where, as here, there was no preexisting lawful ban arising from a prior history of extraordinary disruptions. If, as Respondent would apparently argue here, the disruptive *results* of an employee's otherwise protected use of the lunchroom for union campaign leafletting could themselves be used *ex post facto* to justify a disciplinary penalty for the act of distribution, this would impermissibly chill employees in the exercise of protected rights. The right to distribute union materials in a nonwork area would be a hollow one indeed if the distributor were to be subject to discipline for exercising it based solely on the subsequent reactions of fellow employees to the contents of the materials themselves.

A pattern was by now established in Respondent's treatment of DeJong. If he were to remain in the bargaining unit and exercise protected rights relating to the representation of employees over terms and conditions of employment, he could expect harsh treatment. Having refused to accept the carrot offered by management in the form of a supervisory promotion, Respondent again reached for the cudgel. The multiple disciplinary actions arising from his campaign activities for the April 27 election may be seen as the start of a renewed and increased vendetta against DeJong. He now became the subject of painstaking and picayune attention by his supervisors who regularly prepared private memoranda relating to his "attitude" and work deficiencies on assignments which themselves appear to have been punitively related to his earlier OSHA charges.

When (predictably, given Respondent's evident plan) DeJong had difficulties in executing a series of conflicting assignments, this was duly documented by Peterson, with by now characteristic, unverified references to DeJong's "attitude" and "disruptive" influence. It seems clear that the demotion of DeJong to the "trainee" classification and the attendant reduction in pay was calculated to so humiliate DeJong as to cause him to quit. Apart from the background evidence already cited, this intention may be inferred rather directly from Taylor's statement to him after imposing the demotion that if DeJong's "attitude" did not change and he nevertheless chose to remain in Respondent's employ, Taylor would "make life hell" for DeJong.

The subsequent refusal by Taylor to act on recommendations from sympathetic supervisors to increase DeJong's pay rate may be seen as Taylor's means of emphasizing his determination to fulfill that vow. When DeJong gave subsequent indication that he would neither abandon his protected activities nor quit his employment, Regional Manager Franklin felt compelled to make clear to DeJong that he would fire him "if it was the last thing he ever did."

For reasons implicit in findings and commentary in the preceding section, including Supervisor Anderson's admission to DeJong that Anderson was under severe pressure from top management to reprimand DeJong, I place credence in the additional memoranda with which DeJong's personnel file was being larded. Respondent's true motives were by now too obvious to regard those accusations as reflecting bona fide dissatisfaction with DeJong's work. Even if I were to assume, *arguendo*, that some of the complaints against DeJong were actually based, it is clear that DeJong was being studied by Respondent's agents for symptoms of failure and that his union and protected activities were the motivating reasons for such management scrutiny.

On this record, DeJong was a marked man by the time that Respondent seized on his "false-excuse" absence from work on August 23 to attend a union meeting. If Respondent had not been able to distort that incident into a "dischargeable offense," it would have found another pretext—such was the evident relish with which he was summarily discharged by Taylor and Lester without even the superficial appearance of a request for an accounting by DeJong regarding the absence.

It is settled that the mere existence of valid grounds for a discharge or discipline is no defense to a charge that such action was discriminatorily motivated. *Niagara Falls Memorial Medical Center, Inc.*, 236 NLRB 342, 343 (1978). Considering the frequently false or exaggerated charges of misconduct against DeJong, the tender treatment of employees such as Bryce who were known to be politically opposed to DeJong, the timing of its adverse actions to DeJong's emergence as the Union's principal in-plant spokesman, and the background showing Respondent's proclivity for unlawfully interfering with employee rights under the Act, I conclude that Respondent has engaged in a pattern of discrimination against DeJong because of his union and related protected concerted activities which include the night-shift assignment, demotion, disciplinary reprimands, and eventual discharge which are the subjects of complaint attacks.

2. Failure to hire Sharon DeJong

In October 1978, Marion[98] obtained one of Respondent's application forms, gave it to his wife Sharon, and she completed it on October 27. Marion turned the application in to then Plant Manager Cordova.[99] Cordova

[98] Hereafter, in this section, Marion and Sharon DeJong are referred to by their first names.

[99] Marion erroneously believed she did this in "December" but Respondent's agent, Song, states that she eventually found the application in

Continued

told Marion that there were no current openings, but that the application would be kept on file.

Between 7 and 10 days later, Marion spoke with Supervisor Roger Dowdell, who was complaining of the lack of "qualified help" on Dowdell's sprayer line. Marion mentioned Sharon's prior factory experience and skills with machinery[100] and Dowdell stated that he would "go upstairs and see if he could get her hired to work for him. . . ." Dowdell then left the area, went upstairs, and returned 10 minutes later, telling Marion, "There's no way. There's nothing I can do."

In "February" (Marion's recollection) Marion himself went to the personnel office and spoke with the then acting personnel manager, Diana Song.[101] Believing that Respondent had lost his wife's original application, Marion asked Song for another one and also inquired about possibilities of Sharon's being hired on the same shift that he was working. Song replied that Respondent "was not hiring husbands and wives" and that, even if it did, Sharon could not work on the same shift as Marion. Discouraged by this news, DeJong decided not to take a fresh application for Sharon.[102]

Having heard nothing more, Sharon went to the plant on June 19. Taylor, by then in place as personnel manager, asked Sharon if she "had an application on file." Sharon replied that there was not, assuming that her original application had by then been discarded. Sharon then completed the application, writing in the space calling for the applicant's salary expectations the words: "union scale."[103] She then turned the completed application in to Taylor, who looked at it briefly and then turned Sharon over to Song for an interview. Song perused the application and, noticing the "union scale" reference on it, told Sharon, "We don't have a union here, starting wages are $5.35 an hour. . . ." Song then crossed out "union scale" and wrote in the hourly rate. Song then questioned Sharon about Sharon's "available date" entry of July 16. Sharon explained that her current employer was in Europe and that she would have to wait until he returned and then should give at least a week's notice before she could abandon her office responsibilities in his insurance agency. There is some discrepancy between Song and Sharon as to other aspects of the conversation. Song states that she specifically asked Sharon to contact Respondent again "when she was going to be available." Sharon (who preceded Song to the witness stand) does not expressly admit or deny this, but states that, when she told Song about her reasons for not being available until July 16, Song replied: "it really doesn't make any difference because we are not hiring now, and we have not been hiring for quite a while . . . sometimes things get very hectic around here and we have a big turnover. Sometimes things are quite slow and there is nothing available, so there is no way we can promise anything will be available on the 16th, or even after that time, but if you would like to, you can call us and we will let you know if we have anything."

Between the two accounts, I regard Sharon's as more inherently reliable. For Song to instruct Sharon specifically (as Song would have it) to call in later to advise of her availability would seem unlikely where Sharon had already set forth a specific date for availability. Thus, more likely, Song merely told Sharon in a pointedly pessimistic way that there was no specific point at which a job might come open, but Sharon could, in effect, "check in" with Respondent from time to time.

It is undisputed that Sharon made no further inquiries and Respondent made no further effort to contact Sharon. It is also undisputed that Respondent has experienced high turnover of employees since it opened the Worland plant. A recapitulation of hiring for bargaining unit work in the period May 1978 through October 1979 reflects that nearly 900 persons were hired at extremely close and regular intervals, including especially in the period after late October 1978 when Sharon's first application was filed. Lester admitted particularly, as did Song, that in the spring and summer of 1979 hiring was especially intense.[104] Song acknowledged that production demands during this period frequently required Respondent to refer back to otherwise "stale" applications and affirmatively to seek out persons who had earlier indicated interest in working for Respondent.

Respondent does not contend that there was no work available for which Sharon was qualified. Rather, from Song's testimony, it argues that Sharon never seriously pursued her applications. The first one filed in October 1978 failed to specify an available date. Song testified that such applications were customarily ignored, absent further inquiry by the applicant. As to the failure to call Sharon for openings after July 16, 1979, Respondent relies on Song's testimony that Sharon failed, notwithstanding instructions, to renotify the personnel office regarding her availability. On brief, Respondent's counsel opines that Sharon "did not have any real interest in working for Crown Cork & Seal."

Respondent's "October" files. I therefore find that the application, Resp. Exh. 6, was turned in to Cordova just after the October 27 date which it bears.

[100] Sharon's work experience, as reflected on her application, includes assembly line work and production machinery operation.

[101] As noted earlier, Robert Taylor had not yet been hired to direct the personnel department and Diana Song was then filling that role. At the hearing, Song stated that she did not "recall" DeJong's visit in "February," but, absent further and more explicit denials, I treat DeJong's version reported next as essentially undisputed and credible.

[102] In any case, Sharon's initial application was still on file.

[103] G.C. Exh. 12.

[104] Lester testified that a principal reason for the intensification of hiring during this period was the typical summer demand for soft drink products packaged in containers produced by Respondent for the beverage industry. In anticipation of this demand, Respondent was, in the March-April 1979 period, in the process of installing two additional production lines, thereby requiring additional employees over and above those new hires needed to combat high employee turnover. See also G.C. Exh. 9, in which Lester announced on March 15, 1979 (emphasis supplied):

> In order *to hire and retain* necessary employees in the current job market, we must and we intend to implement certain wage increases which will average approximately 61 cents per hour and pay time and a half for Sunday work. . . .

See also G.C. Exh. 10, in which Lester announced on May 25 the intention, effective June 4, to operate two continuous 12-hour shifts daily, and to grant additional wage increases averaging approximately 59 cents per hour—again predicated on the need "*to hire and retain* necessary employees. . . ." [Emphasis supplied].

Conclusions

The foregoing evidence, considered alone, raises a suspicion that Sharon was being bypassed for regular job openings for which she was qualified, although, viewing Repondent's evidence in its best light, it would not be inherently unlikely that an application might be ignored at any given time due to an applicant's failure actively to demonstrate his or her continuing interest in employment. It is of some significance, however, that, crediting Marion, Song told him in February that Respondent was not hiring spouses—especially for work on the same shift. Song never denied saying this, and she elsewhere stated that Respondent had no policy of refusing to hire spouses.[105] For Song to give a false or misleading reason for discouraging Marion from pursuing a new application for Sharon invites the inference that Song had ulterior motives in preventing Sharon's hire.[106] And the very fact that Marion made two separate inquiries on Sharon's behalf—once through Dowdell in November 1978 and again in his February 1979 meeting with Song, tends to negate Respondent's assertion that Sharon failed to show interest in pursuing her application. So, too, does Sharon's reappearance to file a new application in June 1979. Moreover, when an unfair labor practice charge over the discriminatory refusal to hire Sharon was filed on August 17, 1979, Respondent's argument that Sharon was not "serious" about a job becomes specious. Respondent was plainly on notice after that date, if not before, that Sharon's applications were not intended to be idle.

With matters in this posture, I find of special signficance the undenied testimony of employee Theresa Flores. Flores was hired "in the last week of February," according to her own recollection.[107] She had submitted an application "three months" earlier (i.e., at or around the first of the year). Shortly before she was hired, Song reviewed Flores' application and offered her a job on the spot. When Flores agreed, Song instructed Flores to complete W-2 and other incidental hiring forms and to report to work on the following day. Flores expressed an interest in working on her husband's shift. Song told her that there had been some problems in spouses working together on the same shift, but that she would make an effort later to move Flores from the third shift for which she was hired to the second shift on which Flores' husband worked. Song fulfilled that promise about a month later, after Flores repeated her request.

On the day after Flores was hired, Song approached her and asked Flores if she knew of other persons who might be interested in working at the plant. Flores agreed to check into some other possible applicants. After leaving work that day, Flores spoke with her sister-in-law, who had not previously made an application with Respondent. The sister-in-law applied the next day and was hired immediately.

The General Counsel introduced the application forms completed by nine persons[108] in the period May through August 1979, all of whom were eventually hired. None of those applications reflects that the applicant possessed more pertinent skills or work histories than Sharon. Not all of them indicated immediate availability for work.[109] Some were not hired immediately or even shortly after making application.[110]

From the foregoing, it seems clear, notwithstanding Respondent's contrary explanations, that Respondent was sufficiently desirous of obtaining new employees during material periods to go to greater lengths to obtain help than Song's testimony would indicate. It is also reasonably clear that, absent other motives, Respondent's pressing need for new employees to combat turnover and to gear up for the peak summer production season would be likely to (and did) result in the hire of anyone possessing minimal qualifications who had expressed interest in employment. Where, as here, several efforts were made by both Sharon and Marion to obtain employment for Sharon, it seems doubtful that Song would have been as casually discouraging as she proved to be whenever the subject was raised, unless Respondent were affirmatively avoiding Sharon. The tone of Dowdell's comments to Marion after he first sought to have Sharon hired ("There's no way. There's nothing I can do") strengthens the impression of Respondent's affirmative resistance to hiring Sharon.

Considering further that Respondent had, as found above, adopted an unmistakable posture of hostility towards Marion because of his union and protected concerted activities, it is a reasonable inference that Respondent failed to consider Sharon for the numerous job openings which became available throughout 1979 for similar reasons. In this regard, it matters little whether the motive for avoiding Sharon was to further convince Marion that he would suffer for his protected conduct,[111] or because Sharon herself was perceived by Respondent to be another activist for the Union.[112] *Copes-Vulcan, Inc.*, 237 NLRB 1253, 1257 (1978), and cases cited.

Accordingly, I conclude that Respondent unlawfully discriminated against Sharon DeJong in violation of Section 8(a)(3) and (1).[113]

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[105] Which is well established on this record, including for work on the same shift. See Marion's undisputed testimony.

[106] Song was by then well aware of Marion's emergence as the Union's principal in-house spokesman. She had been involved personally in Marion's efforts to tape-record Cordova's replies to questions pertaining to the scope of Respondent's insurance coverage, which occurred in December 1978.

[107] G.C. Exh. 28, the hiring recapitulation document prepared by Respondent, shows Flores' date of hire as March 5, 1979. The discrepancy is of no moment.

[108] G.C. Exhs. 16(a)–(i).

[109] E.g., Tricia Eggleston (G.C. Exh. 16(g)), who stated she was not available within the "2 weeks" following her submission of the application; and Deborah Barnhill (16(e)) who applied May 21 and stated that she was not available until June 1.

[110] E.g., Maria Eiras (16(a)), who applied August 1 and who was not hired until after October 29, 1979 (her name not appearing on G.C. Exh. 28, the hiring recapitulation for the period May 1978 through October 29, 1979; and it appearing from entries made by Taylor on her application form that she was hired on or about November 5).

[111] As evidenced by Peterson's statement that Marion was "anti-company" and that the company was not about to do him "any favors."

[112] A perception it might have formed from her spousal relationship to DeJong, or from her request in her June 1979 application for "union scale."

[113] Special remedial issues are raised by the fact that a charge was not filed over this conduct until August 17, 1979 (see statement of the case,

Continued

3. The Gerald Kasselder discharge

The most obvious elements of the General Counsel's case in support of the allegation that Kasselder was fired because of his union activities and/or in retaliation for his furnishing information leading to the filing of the 8(a)(2) charge on March 7, 1979, have been set forth in the preceding sections. Thus, as found above, Kasselder had been given special assignments and privileges during the preelection campaign period in support of plans developed at the corporate level to defeat the Union's organizing drive by providing unlawful assistance to the Teamsters. That Kasselder enjoyed favored status during that period is unquestionable given the evidence showing that he was able, upon request, to leave work to confer with Lederer outside the plant, and that he was able to use threats to quit to trigger pressure from corporate headquarters to appease his overtime pay demands without regard to the merits of his demands or the extraordinary measures necessary to satisfy them. In addition, it was established that Kasselder later became a conspicuous proponent of the Union's cause, not only wearing buttons and other paraphernalia indicating his support for the Union in the precertification election period,[114] but also by wearing and displaying campaign paraphernalia supporting himself and DeJong as candidates on a common slate during the period immediately before the April 27, 1979, election of the Union's local officers. Moreover, it has been detailed how Kasselder's confrontation with Lloyd Bryce on the night preceding those local union elections resulted in his own discharge and the imposition of heavy and unlawful discipline on DeJong, while Bryce's role in the confrontation was minimized and resulted in neither discipline nor even any sort of mention in Bryce's personnel file.

Conclusions

The foregoing alone provides strong basis for concluding that Kasselder was discharged because he had become too closely involved with the Union and, more particularly, with DeJong.[115] It must be recalled also that Kasselder's discharge occurred not long after the Union had finally brought to public notice through the filing of charges on March 7, 1979, Respondent's lawful conspiracy to assist the Teamsters during the precertification election period. Respondent could have only suspected Kasselder as the source for the Union's charges in this regard; and it may be assumed that Respondent did not appreciate that kind of whistle blowing any more than it appreciated DeJong's filing of meritorious charges with Wyoming OSHA over unsafe and unhealthy working conditions.

Accordingly, the foregoing evidence establishes not only the traditional *prima facie* elements of an 8(a)(3) and/or (4) case, but also goes a considerable distance towards rebutting the alleged "cause" on which Respondent primarily relied in justifying Kasselder's discharge.

The treatment of Kasselder and DeJong as compared with Respondent's failure in any way to hold Bryce culpable for the confrontation on April 26 is weighty evidence that Respondent's purported reason for firing Kasselder was a pretext, especially when the "investigation" into the circumstances, if any occurred at all, studiously avoided contact with the principal witnesses thereto.[116] I note also as further indication of disparate treatment a memorandum from the personnel file of employee John Needels[117] reflecting that Needels had received "criticism," but no more, for throwing a stick used for picking up cans at the operator of a forklift vehicle "after a disagreement" with the operator on the plant floor.

Faced with this evidence, Respondent argues that Kasselder had been warned previously about "settling personal disputes" and that his engaging in such conduct on April 26 with Bryce therefore amounted to a repeat violation—thereby negating any inference that Kasselder's union or other protected activities influenced the decision to discharge him.

This position derives from evidence showing that Kasselder and employee James Weldon, another alleged discriminatee, had had an out-of-plant argument in late February. The argument stemmed from a pre-Christmas loan which Weldon had made to Kasselder, keeping Kasselder's shotgun as collateral security. In late February a confrontation occurred in the parking lot when Kasselder demanded that Weldon return the shotgun in exchange for a personal check. Weldon refused, demanding cash repayment. Kasselder threatened to "whip [Weldon's] ass" and Weldon was "fixing to tie into him" when DeJong and another employee intervened and the matter was settled peaceably.[118]

Lester testified that he heard a more colorful account shortly after the incident from Diana Song who reported that "there had been an employee who had just gone after another one with a shotgun."[119] Lester states that Kasselder's wife, Kathy, had earlier reported to Lester that Kasselder was planning to come to the plant to get his shotgun back from Weldon and that Weldon was refusing to return the same and, therefore, Kathy was fearful that her husband would "lose his job." Lester claims to have told Kathy to call her husband to "inform him not to come down here and handle the problem himself, that if he did, it could probably cost his job." Later, after obtaining more details from Kathy, Lester states he told her "there was proper authorities to go through, and

supra), thereby bringing only that discriminatory bypassing conduct which occurred on and after February 17, 1979 (the 10(b) "limitations" date) within the potential scope of the complaint. See treatment of these questions in "The Remedy," *infra*.

[114] Including during regular meetings with then Plant Manager Cordova, as Cordova admitted.

[115] That Respondent had begun by that time to regard Kasselder and DeJong as a matched pair is unmistakable from the fact that they were treated as an indivisible, composite, entity for purposes of issuance of the common disciplinary memorandum of February 3, 1979.

[116] None of Respondent's agents ever testified concerning what, if any, investigation took place over the incidents on the night of April 26. It is clear that none of the witnesses who testified in this proceeding concerning those events was ever contacted by Lester or his agents before the decision to terminate Kasselder.

[117] G.C. Exh. 32.

[118] The foregoing is from Weldon's uncontradicted testimony.

[119] Crediting Weldon, the shotgun remained in Weldon's pickup truck throughout the incident. Song never testified about the matter, although called as a witness by Respondent for other purposes.

they're not to handle their personal problems at the plant."

When Song reported the parking lot incident to him, states Lester, Lester sought out Kasselder and assertedly warned him that "if there's ever any more problems of having or handling personal problems on company property, you'll be dismissed." Lester also testified: "I talked to Jim Weldon the following day" and stated that he likewise gave Weldon a "verbal" warning. Lester admits that no record was ever made in either Kasselder's or Weldon's personnel file of any alleged "warning" and, indeed, that no reference whatsoever was ever placed in their files regarding the incident.[120] Lester further recalled that he asked each employee whether he wished to report the incident to the police and that each declined.

Lester further testified that he reminded Kasselder about the earlier warning which he had given to him when he notified Kasselder on April 27 that he was being suspended pending investigation into the Kasselder-Bryce confrontation on the night of April 26.

Lester's testimony in this regard emerged on the last day of the hearing, November 29. Kasselder had testified several weeks earlier, on November 8, and had been dismissed as a witness. Much was made at the time of the fact that Kasselder was planning to return to his current residence in Sedalia, Missouri.[121] Accordingly, the ability of the General Counsel to rebut Lester's claims in this regard was substantially impaired by the practical difficulty of attempting promptly to bring Kasselder back from Missouri to Wyoming for rebuttal. The General Counsel could have sought a continuance at the last minute to hold the record open to permit the parties to reconvene at a later date to hear Kasselder's version. The General Counsel failed to do so, apparently content to take the risk that I would either discredit Lester's testimony in this area, or accord minimal significance to it in the light of the other evidence summarized above tending to support his case regarding Kasselder.

Under more ordinary circumstances, I might be inclined to draw a substantial adverse inference from the failure to recall Kasselder. I am less inclined to do so herein because of the considerable costs, delays, and attendant burdens to which the General Counsel would have been put by bringing Kasselder back for a third hearing session at some future point. In the light of other considerations set forth below, I do not treat the failure of the General Counsel to recall Kasselder as having dispositive significance in deciding the merits of his discharge.

There is much in the record to cast doubt on the truthfulness of Lester's account that he fired Kasselder following the confrontation with Bryce only after considering that Kasselder had been given a prior discharge warning relating to the Weldon dispute, and only after reminding Kasselder of this during the April 27 discharge interview. Kasselder's account of his discharge interview with Lester on April 27, given weeks before Lester's testimony, was markedly different from Lester's. Kasselder recalled that he was first asked to give his own version of the previous night's incident with Bryce, following which Lester only accused him of having been "insubordinate to supervisors" in the past. As Kasselder reported, Lester mentioned, as one prior example of such insubordination, Kasselder's refusal to sign what has been elsewhere found to have been an exaggerated and trumped up memorandum prepared by Peterson and issued in duplicate to both DeJong and Kasselder on February 3. Kasselder further recalled a discussion about the fact that he had been warned, connected with his run-in with Supervisor Pacheco over Pacheco's treatment of Kasselder's wife, that he should have gone to the D&I supervisor with such problems, rather than confront his wife's supervisor. It was in this context, so Kasselder recalled, that "Don Lester referred to the point that I had been warned of taking actions myself against problems that aroused [sic] at the plant." Kasselder was never cross-examined by Respondent's counsel as to whether or not such a remark had been made by Lester in relation to the parking lot feud with Weldon, rather than the angry remarks he admittedly made to Supervisor Pacheco.

Kasselder also testified, and Lester never denied, that Personnel Manager Taylor and the "security" chief, David Murdock, were present during this April 27 meeting. None of them was called by Respondent to corroborate Lester regarding what was said at that meeting.

Moreover, contrary to the tenor of Lester's testimony that he had sought out both Kasselder and Weldon after the late February parking lot incident to give them "warnings" that they would be discharged if they ever again tried to settle personal problems at the plant, Weldon's testimony reflected that Lester never made a point of locating Weldon to talk about the incident. Rather, according to Weldon, the matter was raised by Weldon himself in a chance meeting with Lester. As Weldon described it, "a couple of days after that [incident], Mr. Lester was walking through the plant, and I run into him. And I asked him . . . 'I want to talk to you,'" whereupon Lester, seemingly unconcerned, said "Very well. I'll talk to you later about it." Weldon then pressed, explaining the circumstances of the feud. At this point, apparently, Lester told Weldon that "if it happened again," Weldon would be discharged.[122]

From the fact that no concurrent entries were made in either Kasselder's or Weldon's personnel files regarding the parking lot feud incident—let alone entries reflecting that Kasselder had received a discharge warning about the incident, and from the more detailed and credited testimony of Weldon, *supra*, tending to show that Lester spoke with Weldon on the matter only accidentally and in response to Weldon's pressing of the issue, it is difficult to conclude that the matter aroused much concern on Lester's part at the time. From Kasselder's testimony regarding the specific concerns that Lester voiced in the April 27 discharge interview, it is doubtful that Lester had the Weldon incident in mind at all in determining to discharge Kasselder. Lester's own testimony contains nu-

[120] Compare to Respondent's intensive practice of documentation of even seemingly inconsequential "misconduct" by DeJong.

[121] Corroborative testimony.

[122] From Weldon's testimony on rebuttal.

merous indications of tendency to tailor or exaggerate the nature of certain conversations[123] and his testimony on many material issues in the hearing was likewise incredible.

Balancing all of those considerations, I do not credit Lester that he gave Kasselder an explicit discharge warning following the parking lot episode with Weldon in late February, and/or that he was relying on such an earlier warning in determining that Kasselder should be discharged over the confrontation with Bryce on April 26. Complaints by DeJong to management about Bryce's threats against DeJong's life had gone unremedied. Similarly, Gary Lee's threats against DeJong on the plant floor while brandishing an iron pipe had not been of sufficient concern to management to result in disciplinary action. Bryce's abuse of Kasselder's wife on the morning of April 26 which proximately led to the tussle between him and Kasselder later that evening was not considered sufficient to warrant action against Bryce. In the absence of any explanation by Respondent's agents for their indifference to such conduct by known opponents to DeJong's leadership of the Local, it strains credulity for Respondent to argue now that Kasselder's similar behavior was the motivating factor in the decision to discharge him.

Accordingly, I conclude that the complaint has been sustained by a preponderance of the credible evidence in the record as a whole insofar as it alleges that Respondent fired Kasselder to discourage or interfere with his union and/or protected concerted activities in violation of Section 8(a)(1) and (3) of the Act, and because he was instrumental in providing information leading to meritorious unfair labor practice charges, in violation of Section 8(a)(4) of the Act.

4. The James Weldon discharge

Weldon was discharged on April 9, 1979—ostensibly for leaving his work area on April 6 to take a scheduled break in defiance of Supervisor Jerry Simonson's order that he remain in his work area until one of two Minster presses which had been malfunctioning became repaired. The background is as follows:

Weldon was first hired on October 10, 1978, and became regularly assigned as a mechanic after first performing machine operator's duties for about a week. In the period before the certification election, Weldon regularly wore distinctive red mechanic's overalls on which was displayed a large, white "Steelworkers" emblem sewed or ironed to the back.[124] Weldon was also active in the precertification election period in soliciting employees to sign authorization cards for the Union and in distributing the Union's handbills. On one occasion during this period, Weldon had taped one of the Union's handbills to the inside of the lunchroom window, with the message facing out through the glass into the plant area. Supervisor Frank Pacheco instructed Weldon to remove the handbill, saying that he could be fired for posting such literature. Weldon challenged Pacheco, saying, "Go ahead and get me fired if you can," and claiming a right to "put out" the literature.[125]

After the election, Weldon continued to assist the Union by soliciting other employees to sign green "membership cards." This came to Lester's attention, as he admits, when an employee named Donna Mail came to Lester complaining that someone whom she refused to name had been "threatening" her to sign a "green card." It is also acknowledged by Lester, as Weldon reports, that Weldon came to Lester's office shortly afterwards and stated that he was the one that Mail had been referring to. Weldon states that he denied "harassing people about signing up for the union . . ." and that Lester told Weldon to "be careful and not harass them . . . ."

Lester substantially admits the foregoing but denies that he ever learned that the "green cards" had any relationship to the Union until after the complaint issued concerning Weldon's discharge. I discredit Lester on this point. It unduly strains credulity for him to suggest that he had two separate conversations on the matter of the "green cards" without ever learning what they were for (or, at least, that they were connected to the Union).

Weldon placed this episode in "January." Lester recalled it as having occurred in March. I credit Lester as to the timing. Weldon's estimate of the timing is clearly wrong, since Lester did not arrive at the plant to assume managerial duties until early February.

In February, Weldon had been diagnosed as having a medical condition (hypoglycemia) requiring that he eat regulated amounts of food at regular intervals.[126] He spoke with Frank Franklin about this at the time, producing a physician's request that Weldon be moved from his third-shift position and placed on a second- or first-shift job, "due to difficulty in regulating hypoglycemia on present shift." Franklin complied, assigning Weldon to a first-shift job under Supervisor Roger Dowdell. Weldon informed Dowdell of his need to take briefly spaced eating breaks and Dowdell cooperated by giving him a morning break from 8:30–8:45, a lunch break from 11–11:30, and an afternoon break from 1:30–1:45.

Weldon worked under Dowdell until early March when he took over a vacant position as a Minster operator under Jerry Simonson's supervision. Weldon states that he specifically discussed his diet regimen with Simonson and that Simonson gave him the same break schedule that he had enjoyed under Dowdell. Simonson denies having had such a discussion and claims that the break schedule for employees under his supervision fluc-

[123] As in his wholly unbelievable insistence that Kasselder specifically told him during the April 27 interview that Kasselder had gone to Bryce's work station "solely to create a confrontation."

[124] Weldon had seven pairs of such overalls—each with the Union's emblem on the back. The emblem was roughly 7 inches in diameter.

[125] It is not clear whether Weldon complied with the instruction to take the handbill off the window. The General Counsel originally alleged in complaint par. VII(i), referring to the above incident, that Pacheco, "threatened to fire any employee he found distributing union literature" in violation of Sec. 8(a)(1). Weldon's uncontradicted testimony above is at variance with the complaint allegation and the General Counsel apparently believes that what Weldon described at hearing does not violate Sec. 8(a)(1) since the issue is not discussed in the General Counsel's post-trial brief. Lester testified without contradiction that affixing any materials to plant walls was against company rules. In the light of this and the General Counsel's seeming abandonment of complaint par. VII(i), I recommend dismissal of that allegation.

[126] The condition was diagnosed after Weldon experienced a "blackout" at home.

tuated and was not in any way geared to Weldon's claimed medical needs. Were a credibility resolution important here, I would credit Weldon. Simonson was less than emphatic in claiming that he never learned of Weldon's diet needs until after he dismissed Weldon on April 6. In addition, Weldon's break schedule, prepared by Simonson, was received into evidence[127] and shows that Weldon was under the identical break schedule which Dowdell had given him. Moreover, the break schedules of other employees working under Simonson contain greater time between breaks than does Weldon's schedule. Accordingly, the break schedule on Simonson's crew appears to reflect some special solicitude for Weldon and is consistent with Weldon's claim of special need to eat at regular intervals spaced as briefly as possible from one another.

On April 6, one of the two Minster presses had been malfunctioning, creating the need for it to be shut down periodically while mechanics attempted to make effective repairs. Weldon and another Minster operator, Atkinson, had been required to work in tandem using an improvised technique to handle the flow from two lines through the single functioning Minster press. Break schedules for all employees under Simonson's supervision had been routinely followed, notwithstanding the extraordinary problems with the malfunctioning press, until 1:30 p.m. when it came time for Weldon's afternoon break. At this point, Weldon climbed down from his perch where he had been routing materials through the working press and asked Simonson's permission to take his scheduled break. Weldon states that he told Simonson that he was feeling "dizzy" and "lightheaded." Simonson denies this, saying that Weldon merely asked to take his break. I credit Weldon, substantially for reasons noted above. Both parties agree that Simonson told Weldon to stay on the job at least until repairs were completed on the second Minster. Weldon waited a few more minutes and then asked mechanic Gene Russell how long he expected the repairs to take. Russell estimated that it would take at least another 10 minutes and Weldon then walked away from the area to the lunchroom.

Seeing this, Simonson followed Weldon into the lunchroom and, admittedly angry and impatient, told Weldon to clock out and go home, making it clear that Weldon should not work on his next scheduled day, Saturday. Weldon mentioned his need to eat at regular intervals due to his medical condition and Simonson stated that he did not want to hear about it.

On Monday, April 9, Weldon appeared at work and punched in, seeking to test whether he had been discharged. He was promptly called to Lester's office and, in the presence of Taylor and Kiker, Lester told Weldon that he had been fired. Lester states that Weldon mentioned his medical problem as an excuse for having to leave the work area to take a break, but that he reviewed Weldon's file in Weldon's presence and found no record of a need for a special break schedule other than the physician's request that Weldon be given a first- or second-shift assignment. Lester further states that he had spoken with Simonson and obtained the latter's version of the April 6 incident before deciding to fire Weldon.[128]

[127] G.C. Exh. 22.

Conclusions

Simonson admits that he has experienced cases of other employees learing their work stations without permission and without having been disciplined therefor. In addition, personnel records received into evidence clearly show examples of conduct similar to Weldon's which was not attended by a disciplinary discharge.[129] Considering the seemingly disparate treatment of Weldon, the fact that Weldon had a compelling medical reason for taking a lunchbreak when it was scheduled, the background showing Respondent's hostility to the union activities of its employees, and Weldon's known role as a union activist, I conlude that Lester chose to discharge Weldon, rather than issue some lesser form of discipline to him, because of his union activities, thereby violating Section 8(a)(3) and (1) of the Act.

5. The Roger Geer discharge

Geer was discharged on August 30, 1979—ostensibly for stealing property and equipment from the Worland plant. The background is as follows: Geer was hired in late November 1978, after the certification election had already taken place. He worked as a forklift driver until February 1979 when he was transferred to the shipping and receiving department under the supervision of Bruce Edwards.

Geer became candidate for vice president of the Union's local (opposing Kasselder) in the elections held April 27, 1979. Plant Manager Lester, who fired Geer, denies knowing of any of Geer's union activities. I discredit Lester on this point. His professed lack of knowledge as to the union activities of other employees in these cases has been unconvincing and inconsistent with the balance of credible testimony. It is also improbable, considering his own testimony to the effect that he made frequent daily tours of the plant and otherwise was closely involved in day-to-day operations, including personnel matters.

[128] Simonson testified that he recommended that Weldon be discharged for insubordination. He explained that "we have had problems in the past with disciplinary problems. Supervisors would say, 'Okay. You punch the clock and go home for three days. You're being disciplined.' But the person would complain to the plant manager or something and the very next day he would be back."

[129] G.C. Exhs. 29(a)-(i), reflecting warnings and criticisms and memoranda about several employees who were repeatedly away from work stations without permission or in direct defiance of supervisory orders. For example, employee Williams is recorded by Personnel Manager Taylor as having been warned about leaving the plant early because he simply walked away from work and went home during a shift when they were short of people." (G.C. Exh. 29(l).) Another employee, Sanchez, reportedly punched out and went home during a shift after he had already sought permission from his supervisor and the same had been denied. Sanchez was fired months later, but only after having been absent for about a week without notice (G.C. Exhs. 29(a) and (b)). Employee Zuniga was the subject of three separate writeups between April and November 1979 for having been absent from his assigned area without permission (G.C. Exhs. 29(c)-(e)). Each writeup refers to Zuniga's having been warned "repeatedly" about such problems and warns of further disciplinary action for failure to improve, but reflects no current discipline other than the warnings themselves.

Geer credibly testified and I find that he approached Lester about a week or two before the April 27 election and specifically asked Lester's permission to hang campaign signs in the cafeteria, specifically informing Lester of his candidacy for vice president. Lester promised to "go check," but did not get back to Geer directly. Later, however, Shipping and Receiving Supervisor Edwards told Geer that Lester had denied permission to hang signs in the cafeteria.

There is substantial evidence, however, that Geer's candidacy was neither threatening to Respondent's interests nor was it visited by the same hostility which Respondent showed towards the candidacies of DeJong and Kasselder. Thus, it has been found previously that, about a month before the April 27 election, Taylor took Geer aside and asked him who he thought would win the election, adding: "For everybody's sake, you'd better hope it's not Marion." In addition, Geer testified that his own supervisor, Edwards, offered to make his own office available to Geer for any private campaign talks he might wish to have with employees.[130]

Geer also had a conversation with Edwards in July or August 1979 during the Union's "boycott" of Respondent's products (see fn. 53, *supra*). Edwards questioned Geer as to how many employees were attending the Union's meetings and supporting the boycott. Geer replied, ". . . the majority . . . 80, 90 percent." Edwards pressed as to Geer's own position on the boycott and Geer stated he was part of the group of supporters. Edwards asked Geer for names of other supporters and Geer did not disclose any.

Again suggestive that Respondent did not regard Geer's union activities as particularly threatening is the fact that Taylor called Geer into his office on August 16, 1979, to seek Geer's aid in quelling "union talk" during the visit of Respondent's newly installed corporate president to the Worland plant. According to Geer, Taylor opened the conversation by saying that he thought Geer was a "fair man" and that Taylor could "talk to" Geer. Taylor then asked Geer how many people were attending union meetings. Geer admitted that he "told him" (Taylor), without specifying what he had said. Taylor then urged Geer to get the message to other employees not to bring up the subject of the Union during the visit of the new corporate president, stressing that "if they do mention union while he is here, he'll walk over and pull the switch on this place and everybody will be finding another job."

The circumstances immediately preceding Geer's discharge are as follows: Respondent had been concerned for some time about the apparent theft of supplies, equipment, and tools from the plant. On August 29, Lester received a report from David Murdock of Peddal, Inc., that Geer had driven employee Gene Laird's pickup truck to the plant loading dock area and had been seen loading material[131] in the truck before driving it to a different area of the plant and then returning to the building. At Lester's instruction, Murdock telephoned Worland City Police Detective Joseph Kraft. Kraft and Murdook then surveilled the area. Shortly afterwards, Geer left the plant in his own pickup. Kraft and Murdock then observed employee Laird leave the plant with his loaded pickup and they followed Laird into downtown Worland. Kraft arrested Laird and took him to police headquarters. Lester was notified and arrived shortly afterward and participated in the interrogation of Laird. Under questioning, Laird told Lester and Kraft that he had asked Geer to load some plywood into his (Laird's) pickup, but did not know how the other material had gotten into the truck. Laird also reported that he had found other material in his pickup from time to time in the past and had shared it with Geer. Lester advised Laird that he was discharged.

The next morning, Geer was arrested by Kraft at the plant and was taken to police headquarters. Lester arrived at the headquarters shortly afterwards. In Lester's presence, Kraft asked Geer if he had other material belonging to Respondent. Geer admitted that he had an electric motor with a fan on it and a nearly full spool of electrical wiring containing about 500 feet of wire. Kraft then confronted Geer with a statement which had been taken from employee Dan Thornton in which Thornton had implicated Geer in removal of additional property from the plant.[132] Geer then admitted that he and Thornton had also divided among themselves items removed from the plant including two electric motors and two spools of wire. Geer also mentioned that he had some "pipes" which later turned out to be several lengths of conduit still wrapped in the manufacturer's packaging material and containing a shipping label indicating that it was Respondent's property.

After acknowledging that he was in possession of this additional material, Geer stated to the effect that he was "wrong" for not reporting that he had removed material from the plant. He also commented, "I suppose I am going to lose my job." Lester replied: "You are going to lose your job."[133] Kraft then obtained Geer's consent to search Geer's residential premises. When a search of Geer's premises was subsequently conducted, additional items belonging to Respondent were discovered there. These included, in addition to the unused and still wrapped lengths of conduit and the electric motor and spool of electrical wire which Geer admitted having, a stainless steel sink, a solvent pump, an electric bug killer appliance and its package carton bearing a shipping label for Crown Cork & Seal, a large horseshoe magnet used for industrial purposes, sheets of plywood, and various containers of paint, tar, and solvents, all but one of which were new and unopened.

Geer testified at length regarding how he came into possession of these various items. His testimony was nev-

[130] Credited and undenied testimony of Geer. Edwards did not testify.

[131] Sheets of plywood, a portable "swing-arm" for a piece of production machinery, and a box.

[132] Although no firsthand testimony was heard on the subject, Lester reported that Thornton had come forward about a week earlier while Lester was on vacation and had confessed to acting Plant Manager Frank Franklin that he and Geer had been involved in removal of several items from the plant.

[133] The foregoing is from the mutually corroborative testimony of Lester and Detective Kraft concerning the postarrest interrogation of Geer at the police station. Geer did not specifically deny this admission when testified. Geer was an evasive and contradictory witness regarding this and other findings made hereafter.

ertheless vague and/or contradictory in many particulars. He testified generally that he had received "permission" to remove such items, but admitted later that he was referring only to certain items not included in the above list and which he had removed with then Plant Manager Cordova's specific permission before February 1979. As to the wrapped conduit and some other new items, Geer stated that he did not personally remove them, but acquired them from employee Gary Lee in a transaction which strongly suggests that Geer was aware that they were Respondent's property. Considerable testimony was given regarding whether the items in Geer's possession which he admittedly removed personally from the plant had been "junked" and had been placed in the trash storage area near the plant loading dock. Respondent also used an adjacent area to store some equipment and materials which were not intended to be dumped. Geer was vague whenever pressed as to precisely where certain materials were located when he removed them.

In general, I found Geer to be an uncomfortable and evasive witness in these portions of his testimony and I am unable to credit his various protestations that he only removed items which he believed were destined for the city dump. Other employees called by the General Counsel to corroborate Geer or to establish that the rear loading platform was a known "junk" area gave testimony tending to support Respondent's position that the general practice was for employees to obtain specific permission before removing any items of potential value from the rear loading area.

Conclusions

Considering all of the evidence, I conclude that union animus did not taint Respondent's decision to discharge Geer. It has been noted that Geer did not appear to represent a threat to Respondent's interests in his union activities. If anything, the evidence shows that Geer's candidacy for the vice presidential position (as Kasselder's opponent) was viewed by Respondent as desirable and worthy of encouragement. There is no question that Respondent was concerned about loss of property and equipment due to apparent theft. The evidence is also clear that Respondent had strong cause to believe that Geer was more than casually involved in the removal of items of value. In this regard, the General Counsel points to the fact that Dan Thornton, the employee who had earlier admitted to being involved with Geer in removal of company property, was never disciplined nor discharged—thereby suggesting disparate treatment of Geer and that there was some ulterior purpose for firing him. Likewise, the General Counsel argues that another employee, Vigil, had admitted removing some partially used cans of paint from the rear loading area, and had received only a warning after returning the same. Neither of those situations is persuasive in my opinion. Thornton could have received more favorable treatment because he volunteered his culpability to Respondent before being detected independently in unauthorized removal of property. He also implicated Geer as being involved and thereby furnished evidence which would help Respondent get to the bottom of a matter of longstanding concern to it. Vigil's removal of some partially used paint cans was learned of by Respondent after Geer's discharge as part of a campaign to put a stop to such practices in which employees were asked to volunteer any instances in which they had ever removed property without permission. Vigil voluntarily responded to this inquiry and the petty value of the materials which he removed, coupled with his admission, seems to explain the imposition of a lesser penalty than the one which Geer received.

Also tending to negate the inference that Geer was treated differently from other employees is the fact that Laird, Geer's partner in the removal of materials which precipitated Geer's discharge, was also fired.[134]

Accordingly, I conclude that the evidence as a whole is insufficient to show that Geer was discriminatorily discharged because he engaged in union or other protected concerted activities, and I therefore recommend that the complaint be dismissed in that regard.

The complaint further alleges, however, that Respondent violated Section 8(a)(1) in Taylor's statement to Geer that Respondent's president would "pull the switch" and shut down the plant if any employees mentioned the Union during the president's visit to Worland. This is unquestionably a threat that employees would suffer serious adverse consequences if they engaged in the protected activity of talking about the Union. I agree that Respondent thereby violated Section 8(a)(1). I likewise so find with respect to the undenied actions of Shipping and Receiving Supervisor Edwards in interrogating Geer about the nature and extent of employee support for the Union, including Edwards' questioning of Geer about Geer's own position *vis-a-vis* the Union's boycott.

D. *Alleged Denial of Weingarten Rights*

The complaint specifically alleges that Respondent violated Section 8(a)(1) of the Act each time that it admittedly refused to permit Marion DeJong to have an officer or representative of the Union present as a "witness" during various disciplinary interviews with DeJong.

The law pertaining to an employee's right to representation during a disciplinary interview is now rather well defined in the light of the Supreme Court's decision in *Weingarten*,[135] and subsequent Board decisions. It is now clear, per *Weingarten, Inc., supra*, that employees have the right under Section 7 of the Act to union representation at an employer's investigatory interview where the employee has reason to believe that the investigation will result in disciplinary action. But the Board has also held that an employee has no Section 7 right to such representation at a meeting with his or her employer convened solely for the purpose of informing the employee of, and acting upon, a previously made disciplinary decision. *Baton Rouge Water Works Company*, 246 NLRB 995 (1979); *Texaco, Inc.*, 246 NLRB 1021 (1979). It is likewise clear that the Board would treat an employee's request for a witness, as here, to be sufficient to trigger the

[134] Significantly, the General Counsel does not allege that Laird's discharge represented some unlawful effort to mask the assertedly discriminatory nature of Geer's discharge.

[135] *N.L.R.B. v. J. Weingarten, Inc.*, 420 U.S. 251 (1975).

application of the *Weingarten* right to "representation"—even where, as here, Respondent is refusing to recognize the Union as the employees' exclusive collective-bargaining representative and the Union's status as such is still the subject of litigation at the appellate court level. *Glomac Plastics, Inc.*, 234 NLRB 1309, 1311 (1978).

From the findings in the section detailing Respondent's treatment of DeJong, it appears that in only one instance—that of Lester's questioning of DeJong on May 2, 1979, regarding his circulation of the campaign leaflet—did such a meeting go beyond the limited purpose of informing DeJong about disciplinary action already decided upon. In that meeting, Lester admittedly sought to learn details of DeJong's activities as the author and distributor of campaign materials left in the plant on the night of April 26.

Accordingly, applying the tests outlined above, I conclude that Respondent violated Section 8(a)(1) when DeJong was denied the right to have a "witness" present (in the form of Brazelton, then the Local Union's vice president), during his May 2 disciplinary interview with Lester; but that Respondent did not violate Section 8(a)(1) in any of the other disciplinary meetings, all of which were confined merely to the announcement and issuance of previously decided upon disciplinary action.

E. *The Effect of the May 18, 1979, Settlement Agreement*

Respondent argues that the 8(a)(1) and (2) settlement agreement approved by the Regional Director on May 18, 1979, precludes the finding herein that the matters covered by the settlement agreement amounted to violations of the Act. Respondent's position is erroneous in two respects: First, the settlement agreement never became effective because the remedial action called for therein (the posting of a remedial notice) was never accomplished.[136] Even if Respondent had posted the remedial notice, however, it was still within the discretion of the Regional Director to set the settlement agreement aside and issue a new complaint relating to the ostensibly settled matters upon determination that Respondent had persisted in the types of conduct which, by the terms of the settlement, Respondent had promised to cease and desist from engaging in. Since I have specifically found that Respondent engaged in additional unlawful behavior after the Director approved the settlement which was like or related to the unlawful conduct covered by the settlement agreement, the agreement does not bar revival of the complaint as to matters covered by the agreement, nor does it bar a determination on the merits of such complaint and the entry of an order for appropriate remedial relief for any violations of the Act found to have been committed. See, e.g., *El Rancho Market*, 235 NLRB 468 (1978), enfd. 603 F.2d 223 (9th Cir. 1979).

[136] It appears that the Regional Director, being aware that there were additional charges pending at the time of his approval of the agreement, withheld submitting the remedial notice to Respondent for posting in the Worland plant and, upon subsequently finding merit to those additional charges, refused to permit a limited settlement.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Steelworkers of America, AFL-CIO-CLC, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 307, are each labor organizations within the meaning of Section 2(5) of the Act.

3. By the following acts and conduct, and by each of said acts, and considering the context in which such acts and conduct occurred, Respondent interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act and thereby has engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(1) of the Act:

(a) Promulgating, maintaining, and enforcing the overly broad "no-solicitation" rule first introduced into the Worland plant in or about August 21, 1978.

(b) During the period preceding the certification election held on November 17, 1978, through Roger Dowdell, interrogating Alfred McLelland and Yvonne Hartley about their union activities and sympathies and about how they intended to vote in the certification election.

(c) On or about May 2, 1978, through Donald Lester, denying Marion DeJong the right to have a representative of the said Steelworkers present during an interview in which there were attempts to investigate alleged misconduct by DeJong leading to disciplinary action against him.

(d) On or about May 2, 1979, through Donald Lester, threatening Marion DeJong with discharge should he again introduce union-related material into the plant which caused disruptions.

(e) On or about March 21, 1979, through Donald Peterson, telling Marion DeJong that he would not receive a reassignment to his former day shift because he was anticompany and the company was not going to do him any favors.

(f) On or about May 15, 1979, through Robert Taylor, threatening Marion DeJong that, if he remained in Respondent's employ and failed to change his attitude, Taylor would make life hell for DeJong.

(g) On or about July 5, 1979, through Frank Franklin, threatening to fire Marion DeJong if it was the last thing Franklin ever did.

(h) In or about July or August 1979, through Bruce Edwards, interrogating Roger Geer about his own and other employees' attendance at union meetings and sympathies respecting the said Steelworkers efforts at achieving a boycott of Respondent's product.

(i) On or about August 16, 1979, through Robert Taylor, interrogating Roger Geer about the extent of employee attendance at union meetings, soliciting Geer to urge fellow employees not to mention the existence of the said Steelworkers during the visit of Respondent's corporate president to Worland, and threatening Geer that, if employees mentioned the said Steelworkers during that visit, Respondent's president would pull the switch on the Worland plant and put its employees out of a job.

4. By the following acts and conduct, and by each of said acts, Respondent contributed financial or other support to the said Teamsters at a time when a question concerning the representation of employees at its Worland plant had been raised by the filing of a representation petition by the said Steelworkers and thereby was engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(2) of the Act:

(a) In or about mid-August 1978, by reassigning Gerald Kasselder to a new position on a different shift in order to permit him to meet new employees during plant tours and solicit their membership in the said Teamsters, instructing Kasselder to engage in such activities, and instructing him to cover up the fact that he was engaging in such activities with Respondent's knowledge and cooperation.

(b) Thereafter, through the end of August 1978, permitting Kasselder to engage in such Teamsters solicitation activities on plant premises during worktime and in work areas.

(c) Permitting Kasselder to use company time to leave his normal work during the period mid-August to early September 1978 to meet secretly with Francis Lederer for the purpose of receiving suggestions and assistance as to how to enhance the Teamsters organizing efforts.

(d) Furnishing Kasselder in late August or early September 1979 a list of the names and telephone numbers of employees at the Worland plant in order to facilitate the Teamsters organizing campaign.

(e) Responding favorably in late September 1979 to Kasselder's overtime pay grievance channeled through Teamsters Agent Frank Frauenfeld to Respondent's Philadelphia corporate headquarters in order to prevent Kasselder from quitting his job and thereby losing the Teamsters key in-plant organizer and risking exposure of Respondent's unlawful conspiracy with the Teamsters.

5. By the following acts and conduct, and by each of said acts, Respondent has discriminated against employees in regard to hire or tenure of employment or a term or condition of employment in order to discourage membership in the said Steelworkers and thereby has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(3) of the Act:

(a) Commencing on or about August 21, 1978, promulgating, maintaining, and enforcing a no-solicitation rule (and without regard to its facial legality or illegality) to discourage and frustrate the organizing efforts and petition for certification of the said Steelworkers, while simultaneously authorizing, subsidizing, and otherwise supporting solicitation activity in working areas and on working time for the said Teamsters.

(b) Commencing on or about January 5, 1979, and continuing through his discharge on August 23, 1979, engaging in discriminatory pattern of harassment, disparagement, and adverse treatment of Marion DeJong because of his union and related protected concerted activities—all affecting his wages, hours of work, and peaceable enjoyment of, and tenure in, employment; said discriminatory pattern consisting of: Assignment to replumbing of executive washrooms on or about January 5; commencement shortly thereafter and continuance through his discharge of an intensive program of supervisory surveillance of his work and the recording of false or exaggerated critiques regarding his performance and attitude; condoning threats and acts of violence made against DeJong by employees known to be politically opposed to DeJong's leadership of the Steelworkers in-plant forces; reassignment in or about mid-January 1979 to a less desirable night shift and refusing thereafter to reinstate him to his former day shift; issuance of a 3-day disciplinary suspension on or about April 28, 1979, and, on May 2, 1979, issuing written and oral disciplinary warnings and threats of discharge for having engaged in union and related protected concerted activities; demoting DeJong to the position of mechanic-trainee and reducing his hourly pay rate on or about May 15, 1979, and thereafter refusing to act on favorable supervisory recommendations to increase his pay rate, and, finally, discharging him on August 24, 1979.

(c) Discharging James Weldon on April 9, 1979.

(d) Suspending Gerald Kasselder without further pay on April 27, 1979, and discharging him on April 30, 1979.

(e) On and after February 17, 1979, failing and refusing to hire Sharon DeJong to a position for which she was qualified.

6. By discharging Gerald Kasselder in part because he was instrumental in furnishing information which led to the filing on March 7, 1979, of unfair labor practice charges over Respondent's unlawful assistance to the Teamsters, Respondent discriminated against an employee because he filed charges or gave testimony under the Act and thereby has engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(4) of the Act.

7. The acts and conduct of Respondent found above to involve unfair labor practices are of such a character as to lead to labor disputes burdening and obstructing commerce and the free flow of commerce between and among the several States and therefore warrant the assertion of jurisdiction by the Board and the entry of appropriate remedial orders.

THE REMEDY

A. *Generally*

Respondent's violations of the Act as found above were widespread, persistent, blatant, and struck directly at the heart of the rights of employees. They were also, in large part, inspired or orchestrated, or participated in by Respondent's corporate level agents. For these reasons, applying the standards of *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979), I have provided in my recommended order for a broad cease-and-desist provision covering Respondent's operations generally, and not simply at the Worland plant.[137]

[137] In addition, although not decisive in my recommendation for a broad order, I note that Respondent has been found by the Board to have committed similar 8(a)(1), (2), and (3) violations in another case involving the Steelworkers as charging party growing out of organizing at Respondent's Kankakee, Illinois, plant. *Crown Cork & Seal, supra*, 182 NLRB at 662-665. As of this writing, the Board has not issued a final

Continued

B. *Special Considerations*

Having found that Respondent unlawfully discharged Marion DeJong, Gerald Kasselder, and James Weldon, and unlawfully refused to hire Sharon DeJong, I shall recommend that the first three above-named employees be offered immediate, full, and unconditional reinstatement to their former jobs and, in the case of Sharon DeJong, that she be offered immediate employment in a production and maintenance position within the unit in which the Board has certified the Union, and that each above-named employee be made whole for losses of earnings and other benefits which they may have suffered as a result of Respondent's unlawful conduct found herein, together with appropriate interest on backpay. Reinstatement and backpay questions in each case are to be handled generally in accordance with the policies and formulas established by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950); *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962); and *Florida Steel Corporation*, 231 NLRB 651 (1977), subject to the following special considerations tailored to the individual circumstances of each employee who was discriminated against:

Marion DeJong: Having found, *inter alia*, that DeJong was discriminatorily transferred from the day shift to the evening shift in mid-January 1979, and that he was discriminatorily demoted from his former position of maintenance machinist in mid-May 1979 and had his hourly wage rate discriminatorily reduced, Respondent's duty to reinstate and make him whole includes the duty to offer him reinstatement to his original day-shift position as maintenance machinist and to pay him backpay based on the pay rate established for that position, including as it may have been adjusted upwards during the period after he was demoted. *Walker Electric Co., Inc.*, 219 NLRB 481, 486 (1975).

Since I have specifically found that Marion DeJong was discriminatorily issued a 3-day suspension in late April 1979, he shall be entitled to full backpay for that 3-day period.

Since I have found specifically that he received unlawful written discipline and warnings on or about May 2, 1979, and, generally, that Respondent, in support of a general plan to frustrate the Union's effectiveness, engaged in a pattern and practice of issuing or preparing false, exaggerated, or otherwise discriminatorily prompted memos, warnings, incident reports, and other writings for inclusion in Marion DeJong's personnel file, I have provided that Respondent shall expunge such adverse materials from DeJong's files.[138]

Gerald Kasselder and James Weldon: The record reflects that Kasselder and Weldon were rehired after their original unlawful discharges and after unfair labor practice charges had been filed over said discharges, in order to minimize Respondent's potential backpay liability as to them. Whether or not those rehirings satisfied Respondent's obligation under the recommended Order to grant immediate, full, and unconditional reinstatement was not litigated in these proceedings and, accordingly, I make no findings thereon, this being an appropriate question for resolution at the compliance stage of these proceedings. *Pyro Mining Company, Inc.*, 233 NLRB 233, fn. 2 (1977).

Sharon DeJong: Since I have found that Respondent had regular and frequent job openings for production and maintenance positions for which Sharon DeJong was qualified, including during the pre-10(b) period after she filed her original application in October 1978, I have provided that Respondent's backpay obligation as to her shall commence as of the first day within the 10(b) period; i.e., February 17, 1979.

Upon the foregoing findings of fact, conclusions of law, and upon the entire record herein, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[139]

The Respondent, Crown Cork & Seal Company, Inc., Worland, Wyoming, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Maintaining or giving further force or effect to the "no-solicitation" rule which was introduced into the Worland plant on or about August 21, 1978.

(b) Promulgating, maintaining, or enforcing any rule limiting or restricting employees in the exercise of the rights guaranteed in Section 7 of the Act for the purpose of discouraging membership in, or activities on behalf of, United Steelworkers of America, AFL-CIO-CLC, or any other labor organization.

(c) Interrogating employees concerning their membership in, sympathies concerning, or activities on behalf of the said Steelworkers, or any other labor organization.

(d) Threatening employees that they will be disciplined, demoted, discharged, or otherwise discriminated against, because they engage in union or other concerted activities protected by Section 7 of the Act.

order in *Crown Cork de Puerto Rico, supra*, in which Administrative Law Judge Socoloff found that Respondent, *inter alia*, violated Sec. 8(a)(2) by granting unlawful assistance to an in-house union while there existed a real question concerning representation due to a rival union's organizing drive, and also violated Sec. 8(a)(1) and (3) by widespread threats and acts of discrimination against supporters of the union disfavored by Respondent. Neither has the Board issued a final order in *Crown Cork & Seal Company, Inc.*, Cases 11-CA-6643 and 11-CA-7978, in which Administrative Law Alvin Lieberman determined (JD-181-80) that Respondent engaged in violations of Section 8(a)(1) and (3), including by spying on its employees' union activities at its Cheraw, South Carolina, plant, and by discharging an employee because of his support for the charging party union in that case (also the Steelworkers). Accordingly, those latter cases have not influenced my recommendations respecting the scope of remedial order herein.

[138] Inasmuch as I have found that DeJong admittedly overstayed his break on the evening of April 26, 1979, after receiving a warning from his supervisor that he would receive a "write-up" if he returned late from the break, my recommended Order excludes the two memoranda relating to that incident (i.e., Resp. Exhs. 2(h) and (j)) from the general expungement requirement.

[139] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(e) Threatening to discipline employees because their union or other protected concerted activities violate the "no-solicitation" rule introduced into the Worland plant on or about August 21, 1978, or violate any other rule, no matter how facially valid, which is discriminatorily introduced in order to discourage membership in, or activities on behalf of, the said Steelworkers, or any other labor organization.

(f) Refusing to permit employees to have a union representative present during investigatory interviews leading to potential discipline of employees.

(g) Granting financial or other support or assistance to International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union No. 307, or to any other labor organization.

(h) Discriminating against employees by disciplining, demoting, discharging, reassigning to less desirable or more onerous shifts or job tasks, fabricating or exaggerating reports or other writings for inclusion in personnel files, or by extraordinary surveillance or study of employees' working performance because they engage in union or other protected concerted activities.

(i) Failing or refusing to hire employees because they are, or are believed to be, members of, or engaged in activities on behalf of a labor organization, or because they are relatives of persons engaged in such activities.

(j) Discharging or otherwise discriminating against employees because they have filed charges or given testimony under the Act, or are believed to have engaged in such conduct.

(k) In any other manner or by any other means at any of its operations subject to the Board's jurisdiction interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following afirmative action deemed necessary to effectuate the purposes and policies of the Act:

(a) Rescind and give no further force or effect to the "no-solicitation" rule introduced into the Worland plant on or about August 21, 1978.

(b) Offer immediate, full, and unconditional reinstatement to Marion DeJong to the maintenance machinist position on the day shift which he occupied prior to his mid-January 1970 reassignment to the evening shift, without prejudice to his seniority and other rights, and make him whole, with appropriate interest, for all wages and benefits he lost as a result of: his unlawful 3-day suspension between approximately April 27 and May 2, 1979; his unlawful demotion in job classification and hourly pay rate on and after May 14, 1979; and his unlawful discharge on August 24, 1979—all in the manner prescribed in the section entitled "The Remedy," *supra.*

(c) Expunge from his personnel file and any other records maintained by Respondent all adverse reports, memoranda, and other writings pertaining to Marion DeJong, with the exception of the two memoranda prepared by Supervisor Christensen reflecting the circumstances of DeJong's late return from a break on April 26, 1979, and give no further adverse weight or significance to such expunged writings or to the incidents underlying them in any future personnel actions or appraisals affecting DeJong.

(d) To the extent it has not already done so, offer immediate, full, and unconditional reinstatement to employees James Weldon and Gerald Kasselder to the positions which they occupied prior to their discharges on, respectively, April 9 and 27, 1979, without prejudice to their seniority or other rights and privileges, and make those employees whole, with appropriate interest, for any losses of wages or benefits which they may have suffered as a result of their unlawful discharges on those respective dates—all in the manner prescribed in the section entitled "The Remedy," *supra.*

(e) Offer immediate and unconditional employment to Sharon DeJong in a position it would have offered her but for its unlawful refusal to hire her on and after February 17, 1979, with full credit from that date for purposes of seniority and other tenure-related benefits and policies, and make her whole, with appropriate interest, for any wages and benefits which she may have lost as a result of Respondent's unlawful failure and refusal to hire her on or after February 17, 1979—all in the manner prescribed in the section entitled "The Remedy," *supra.*

(f) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Post at its Worland, Wyoming, plant copies of the attached notice marked "Appendix."[140] Copies of said notice, on forms provided by the Regional Director for Region 27, after being duly signed by an authorized representative of Respondent, shall be posted by it immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director for Region 27, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

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[140] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."